

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE**

**Execution Application No. 9 of 2023
(previously numbered O.A. 71/2023)**

Arvind Manohar Mahajan & Ors

...Applicants

Versus

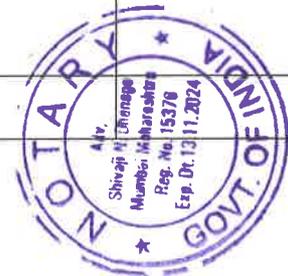
M/s Benzo Chem Industries Private Limited &

Ors.

...Respondents

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MZM Legal LLP

Advocate of Respondent No. 1

Level Six, 6th Floor, One Forbes

Dr. V. B. Gandhi Marg Kalaghoda,

Mumbai 400 001

Email: lawyers@mzmlegal.com



**BEFORE THE NATIONAL GREEN TRIBUNAL
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M/s Benzo Chem Industries Private Limited &
Ors.

...Respondents

**AFFIDAVIT IN REPLY ON BEHALF OF THE
RESPONDENT NO.1 TO THE APPLICATION FILED BY
THE APPLICANTS**

I, Pravin Nathaji Patil, aged around 40 years, the Authorised Representative of the Respondent No. 1 above named, having registered address at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001, do hereby solemnly affirm and declare as under:

1. I am the Authorized Representative of the Respondent No. 1 vide board resolution dated 21.09.2022 made in my favour by the Respondent No. 1. A copy of the same is annexed herewith to the present Affidavit as **Exhibit-R1**. As such, I am well conversant with the facts and circumstances of this case as per record maintained by the Respondent No. 1 and I am hence competent to depose the present affidavit.



2. I have perused a copy of the captioned Execution Application, filed by the Applicants. I am aware of the facts and circumstances of the matter and I am able to depose to the same and as such, I am filing this instant Affidavit-in-Reply in response to the captioned Execution Application.
3. I say that the Respondent No. 1 is a company incorporated under the provisions of Companies Act 1956 and validly existing under the Companies Act, 2013 having its registered office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001.
4. At the outset, I deny each and every allegation, averment, contention and submission made by the Applicants against the Respondent No. 1 in the captioned Execution Application. Nothing contained and submitted in the subject Execution Application shall be deemed to have been admitted by me for want of specific traverse herein.
5. I say that the present reply is being filed by the Respondent No. 1 to bring before this Hon'ble Tribunal certain pertinent facts which ought to be taken into account the time of deciding the captioned Execution Application.

PRELIMINARY OBJECTION TO THE EXECUTION APPLICATION

6. I say that the Applicants had filed Original Application No. 124 of 2017 (WZ) ("**Original Application**") on 11.07.2017 before the Hon'ble Tribunal alleging that the land and well



water were being affected due to discharge of hazardous effluents affecting the cultivation of crops and the land being unfit for cultivation due to two manufacturing units of the Respondent No. 1 in the MIDC industrial area in Dasarkhed village, Malkapur. The Respondent No. 1 was arraigned as Respondent No. 1 in the Original Application. The Maharashtra Pollution Control Board (“MPCB”), the Maharashtra Industrial Development Corporation (“MIDC”), and the Junior Inspector of Factories were arraigned as the other Respondents.

7. I say that in the said Original Application, the Hon’ble Tribunal had passed an order dated 29.08.2022 [“**OA Order**”] holding the Respondent No. 1 liable for environmental damages and on one hand directing the joint Committee of the CPCB and the State PCB to visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage, further directing MPCB to consider compliance of the ZLD and liability to environmental compensation on polluter pays principle for restoration of environment and furthermore directing the State PCB to close the unit of the Respondent No. 1 if the violations are continuing and on the other hand for the past violations directing the Respondent No. 1 to pay compensation of INR 25 crores (Indian Rupees Twenty Five Crores Only) for a period prior to 5 years of filing of the Complaint up to October 2020 to be deposited with Original Respondent No.



2 for being utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. A copy of the OA Order is annexed as **Annexure 'A'** to the Execution Application .

8. I say that aggrieved by the aforementioned order dated OA Order dated 29.08.2022 passed by the Hon'ble NGT, the Respondent No. 1 preferred a Review Application before the Hon'ble NGT Western Bench, Pune on 26.09.2022 under Section 19 of the National Green Tribunal Act r/w Rule 22 of the National Green Tribunal (Practice and Procedure) Rules, 2011 seeking a review of the said order [**“Review Application”**]. The Respondent No. 1 also filed interim application 156 of 2022 for urgent interim reliefs and interim application 158 of 2022 for oral hearing in the review application. A copy of the Review Application No. 7 of 2022 (without annexures) dated 26.09.2022 filed by the Respondent No. 1 is annexed hereto and marked as **“Exhibit-R2”**. A copy of the I.A. No. 156 of 2022 (without annexures) dated 26.09.2022 filed by the Respondent No. 1 is annexed hereto and marked as **“Exhibit-R3”**. A copy of the I.A. No. 158 of 2022 (without annexures) filed by the Respondent No. 1 is annexed hereto and marked as **“Exhibit-R4”**.



9. I say that the aforementioned Review Application No. 7 of 2022 came up for hearing before the Hon'ble NGT, Western Bench, Pune on 30.09.2022. However, the Hon'ble Bench refused to hear the matter on the ground that the judges who reviewed the matter are now sitting in the Hon'ble NGT, New Delhi, and that for reason, the Review Application should be heard by them. The Hon'ble NGT, therefore, directed the registry to place the matter before the Hon'ble Chairperson at the earliest. A copy of the order dated 30.09.2022 passed by the Hon'ble NGT Western Bench in Review Application No. 7 of 2022 is annexed hereto and marked as "**Exhibit-R5**".
10. I say that on 01.10.2022, the Respondent No. 1's advocate preferred an email to the Registry of the Hon'ble NGT Western Bench, Pune seeking urgent listing of the Respondent No. 1's Review Application as per the impugned order dated 30.09.2022. In this email, it was highlighted that that the Respondent No. 1 was seeking urgent interim reliefs and an oral hearing before the Hon'ble Bench. A copy of the Respondent No. 1's advocate's email dated 01.10.2022 is annexed hereto and marked as "**Exhibit-R6**".
11. I say that even when by 13.10.2022, the Respondent No. 1's Review Application did not come up for hearing and the Respondent No. 1's advocate was constrained to address another email to the Registry of the Hon'ble NGT Western



Bench, Pune seeking urgent listing of the review application. The Respondent No. 1's Advocates also made telephonic calls to the Hon'ble Registry, and were informed that the matter has been redirected to the Registry of the Hon'ble NGT, New Delhi. A copy of the Respondent No. 1's advocate's email dated 13.10.2022 is annexed hereto and marked as "**Exhibit-R7**".

12. I say that even on 02.11.2022, the Respondent No. 1's Review Application had not come up for hearing and no next date of hearing was reflected on the website of the Hon'ble NGT as well. In view of the same, the Respondent No. 1's advocate was constrained to address a letter to the Registry of the Hon'ble NGT, New Delhi seeking an urgent listing of the Respondent No. 1's Review Application. In this email, it was highlighted that the time limit for complying with the order dated 29.08.2022 passed by the Hon'ble NGT in Original Application No. 124 of 2017 was on 29.11.2022, out of which a significant time had elapsed without the Respondent No. 1's Review Application qua the said order being heard. That in spite of this, the Respondent No. 1's Review Application did not come to be listed for a hearing. A copy of the Respondent No. 1's advocate's email dated 02.11.2022 is annexed hereto and marked as "**Exhibit-R8**".

13. I say that on 07.11.2022, the Respondent No. 1's advocate visited and made enquiries with the Registry at the Hon'ble



NGT, New Delhi and was informed that the matter is likely to be listed only after February, 2023. The Registry further informed the Respondent No. 1's advocate that if early hearing is sought then an Interim Application to that effect should be preferred by them.

14. I say that on 09.11.2022, the Respondent No. 1's Review Application did not come up for hearing, and the Respondent No. 1 was constrained to prefer an Interim Application before the Hon'ble NGT being I.A. No. 173 of 2022 seeking an urgent listing of its Review Application. A copy of the I.A. No. 173 of 2022 dated 09.11.2022 preferred by the Respondent No. 1 is annexed hereto and marked as "Exhibit-R9".

15. I say that as on 16.11.2022, even the I.A. for early hearing filed by the Respondent No. 1 did not come up for hearing and the Respondent No. 1's advocate was constrained to prefer a mentioning letter to the Registry of the Hon'ble NGT, New Delhi requesting that the papers of the Respondent No. 1's application be made available to the bench of the Hon'ble Chairperson for the purposes of urgent oral mentioning on 17.11.2022. A copy of the email dated 16.11.2022 of the Respondent No. 1's advocate is annexed hereto and marked as "Exhibit-R10".



16. I say that on 17.11.2022, the Respondent No. 1's advocate mentioned the matter before the three-judge bench of the Hon'ble Chairperson. In spite of making out the urgency in the matter, the Hon'ble Chairperson rejected the request for an early hearing.
17. I say that aggrieved by the non-listing of its Review Application, the Respondent No. 1 herein preferred a SLP before the Hon'ble Supreme Court of India, being SLP (C) No. 21613 of 2022 ["SLP"] impugning the order dated 30.09.2022 passed by the Hon'ble NGT Western Bench wherein it refused to hear the Respondent No. 1's Review Application and transferred the same to the Principal Bench in spite of the matter being a Western Zone Matter. I say that the SLP was mentioned before Hon'ble Supreme Court of India on 22.11.2022 and the Hon'ble Chief Justice was pleased to grant urgent circulation for 28.11.2022. A copy of the SLP (C) No. 21613 of 2022 filed by the Respondent No. 1 is annexed hereto and marked as "**Exhibit-R11**".
18. I say that unbeknownst to the Respondent No. 1 herein, a Special Bench of the Hon'ble NGT Western Zone at Pune was constituted, with some members of the Principal Bench at New Delhi joining through VC, and the Respondent No. 1's Review Application was taken up in the chambers on 22.11.2022. Without affording an opportunity to the Respondent No. 1 to highlight the errors patent on the face



of record in the first impugned order dated 29.08.2022, this Special Bench proceeded to dismiss the Review Application (second impugned order) without paying any heed to the grounds urged by the Respondent No. 1 and simply reiterating its previous order dated 29.08.2022. A copy of the Order dated 22.11.2022 of the Hon'ble NGT in Review Application 07 of 2022 is hereto annexed and marked as "**Exhibit - R12**".

19. I say that the Respondent No. 1 came to learn about this order upon a routine check for the date of listing of its Review Application on the Hon'ble NGT's website on 27.11.2022.

20. I say that the Respondent No. 1's SLP (C) No. 21613 of 2022 came up for hearing on 28.11.2022. The matter was withdrawn by the Respondent No. 1 in view of the aforementioned order. However, Hon'ble Supreme Court of India was pleased to pass an order dated 28.11.2022 whereby an extension of one week was granted to the Respondent No. 1 to comply with the order of 29.08.2022 passed by the Hon'ble NGT Special Bench. A copy of the order dated 28.11.2022 of the Hon'ble Supreme Court in SLP (C) No. 21613 is annexed hereto and marked as "**Exhibit-R13**".

21. I say that aggrieved with the OA Order dated 29.08.2022 and RA Order dated 22.11.2022 by the Hon'ble NGT Special Bench, the Respondent No. 1 preferred Civil Appeal



No. 9202-9203 of 2022 [**“Civil Appeal”**]. A copy of the Civil Appeal No. 9202-9203 of 2022 (without annexures) dated 02.12.2022 filed by the Respondent No. 1 in the Hon’ble Supreme Court is annexed hereto and marked as **“Exhibit-R14”**.

22. I say that meanwhile, Applicant No. 1 filed Miscellaneous Application No. 27/2022 [**“Miscellaneous Application”**] in this Hon’ble Tribunal seeking review and modification of the OA Order. However, on the first date of hearing, the advocate of the Applicant sought to withdraw the Miscellaneous Application. In lieu of the same, the Hon’ble Tribunal was pleased to dismiss the Miscellaneous Application as withdrawn. A copy of the order dated 05.12.2022 in Miscellaneous Application 27/2022 is annexed hereto and marked as **“Exhibit – R15”**.

23. I say that the Civil Appeal filed by the Respondent No. 1 came up for hearing on 09.12.2022 and the Hon’ble Supreme Court was pleased to issue show cause and stay the execution of the OA Order [**“Stay Order”**]. A copy of the order dated 09.12.2022 of the Hon’ble Supreme Court in Civil Appeal No. 9202-9203 of 2022 is annexed hereto and marked as **“Exhibit-R16”**.

24. I say that the other Respondents were duly intimated about the Civil Appeal and the Stay Order by the advocates of the Respondent No. 1 vide an email and attachment dated 12.12.2022. A copy of the email dated 12.12.2022 from the



advocates of Respondent No. 1 to the other Respondents is annexed hereto and marked as “**Exhibit-R17**”.

25. I say that subsequently vide an office report dated 21.04.2023, the Registry of the Hon’ble Supreme Court had directed the Respondent No. 1 to provide 16 copies of the Appeal so that service could be completed. The advocate for the Respondent No. 1 duly provided the copies pursuant to which the notices along with appeal were dispatched to the Applicants and other Respondents. A copy of the office report dated 21.04.2023 and status of the notices as seen on the Supreme Court website is annexed hereto and marked as “**Exhibit-R18**”.

26. It is trite law that an order of stay by a superior court in an execution matter is in the nature of a prohibitory order and is addressed to the court that is carrying out execution and prohibits the court from proceeding with the execution further. The effect of the stay order is to prohibit the executing court from proceeding further. As soon therefore as the executing court has come to know of the order either by communication from the court passing the stay order or by an affidavit from one party or the other or in any other way the executing court cannot proceed further and if it does so it acts illegally. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all



proceedings taken after the knowledge of the order would be a nullity.

27. I say that in lieu of the Civil Appeal and the Stay Order of the Hon'ble Supreme Court, the Hon'ble Tribunal cannot proceed with the Execution Application and the same is to be dismissed in limine.
28. The Respondent No. 1 craves leave to file a detailed additional reply to the Original Application filed by the Respondent No. 1.
29. The Respondent No. 1 craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.
30. The Respondent No. 1 craves leave and liberty of this Hon'ble Tribunal to produce documents forming part of the record and proceedings in Original Application 124/2027 and Review Application 07 of 2022 as and when required.
31. **THE RESPONDENT NO. 1, THEREFORE, HUMBLY PRAYS THAT:**

- a) This Hon'ble Tribunal be pleased to dismiss the Execution Application filed by the Applicants.
- b) During the pendency of the hearing and until the final disposal of the Civil Appeal, this Hon'ble Tribunal may be pleased to dismiss any existing or prospective



Execution Application filed for the enforcement of the Order dated 29.08.2022 in Original Application 124 of 2017.

- c) That costs may be imposed upon the Applicants.
- d) That such other and further reliefs as the nature and circumstances of the case may require, be granted.

Dated this 3rd day of August 2023

For Benzo Chem Industries Pvt. Ltd.

Rawe

Company Secretary

Authorised Mem. No. A24037

Representative of
Respondent No. 1



[Signature]

MZM Legal LLP
Advocate for Respondent No. 1
Level Six, 6th Floor,
One Forbes, Dr. V. B. Gandhi Marg,
Kalaghoda, Mumbai 400 001
Email: lawyers@mzmlegal.com

VERIFICATION

I, Pravin Nathaji Patil, son of Nathaji Patil, Age around 40 years
Designation: Company Secretary, do hereby solemnly declare and
state that I am the authorised representative of the Respondent No.

1. I state that what is stated in paragraphs ~~1~~¹ to ~~23~~²⁵ are true to
my knowledge and information and what is stated in paragraphs
26 to 31 are based on advice which I have received from my
advocates.

For Benzo Chem Industries Pvt. Ltd.

Solemnly declared at Mumbai on
this 03rd day of August 2023.

]]

Pravin
Company Secretary
Mem. No. A24037

DEPONENT

BEFORE ME

Identified By

BEFORE ME



[Signature]

[Signature]
Adv. Shwaji N. Dhanage
Notary Govt Of India
Regd. No. 18876 MUMBAI (MS)
404-406, 4th Floor, Davar House,
197/199, Near Central Camera Bldg.
D.N. Road, Fort, Mumbai - 400001

MZM Legal LLP

NOTED & REGISTERED

Advocate for Respondent No. 1

Page No.....76.....Sr. No. 553.....

Level Six, Sixth Floor,

Date.....03 AUG 2023.....

One Forbes, Dr. V. B. Gandhi Marg,

Kalaghoda, Mumbai 400 001

Email: lawyers@mzmlegal.com



**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
Execution Application No. 9 of 2023
(previously numbered O.A. 71/2023)**

Arvind Manohar Mahajan & Ors.

...Applicants

Versus

M/s Benzo Chem Industries Private Limited &
Ors.

...Respondents

VAKALATNAMA

I, Pravin Nathaji Patil, S/o Nathaji Patil, Authorized Representative of Respondent No. 1 above do hereby appoint:

MZM LEGAL LLP

**Level Six, Sixth Floor, One Forbes
Dr. VB Gandhi Marg, Kala Ghoda,
Fort, Mumbai-400001.**

Tel.: 22-22643333/6666

**Email: lawyers@mzmlegal.com;
waseemp@mzmlegal.com**

To be my/our advocate in the above noted case and authorize them/him/her to act, appear and plead on my behalf in this court or any other court in which the same may be tried or heard.

To sign, verify any pleadings, replication, appeal, cross objections of petitioners for executions, review, revisions, restoration, affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take documents.

To withdraw or compromise the said case or submit to arbitration any difference or dispute that may arise touching or in a manner relating to the said case.

To take out execution proceedings.



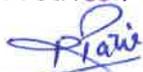
To deposit, draw and receive money cheque and grant receipts thereof and do all other acts and thing which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other legal practitioner authorizing them to exercise the power and authorities hereby conferred upon the Advocate whenever he may think fit to do so and sign the power of attorney on my /our behalf.

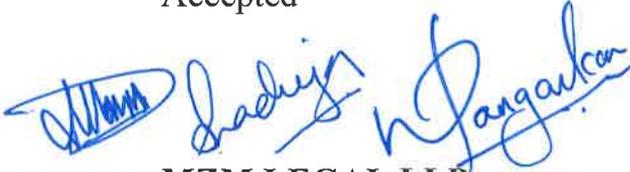
And I/ We, the undersigned do hereby agree to rectify and confirm all acts, done by the said Advocate and or his substitute in the matter as my/our own acts done by me/us to all intent and purposes.

IN WITNESS WHEREOF I / WE do hereunto set my / our hands to these presents this0.3rd..... Day of August 2023

For Benzo Chem Industries Pvt. Ltd.


Company Secretary
Mem. No. 124037
Authorized Representative
of Respondent No. 1

Accepted



MZM LEGAL LLP

Level Six, 6th Floor, One Forbes
Dr. VB Gandhi Marg, Kala Ghoda,
Fort, Mumbai-400001.
Tel.: 22-22643333/6666
Email: lawyers@mzmlegal.com;
waseemp@mzmlegal.com

BENZO CHEM INDUSTRIES PRIVATE LIMITED

Registered Office: 26/28-A, Cawasji Patel Street, Fort, Mumbai - 400 001
 ☎: +91-22-43555888 • Fax No. 022-40057327 • Email: info@benzochem.co.in • Website: www.bcipl.com
 CIN - U24100MH1986PTC041751

CERTIFIED TRUE COPY OF RESOLUTION PASSED AT THE MEETING OF BOARD OF DIRECTORS OF BENZO CHEM INDUSTRIES PRIVATE LIMITED FOR FY 2022-23 HELD ON SEPTEMBER 21, 2022 AT THE REGISTERED OFFICE OF THE COMPANY AT 11.00 A.M.

“RESOLVED THAT in supersession of all previous resolutions passed by the Board of Directors, Mr. Pravin N. Patil, Company Secretary of the Company, be and is hereby, authorized to commence, initiate and prosecute any legal proceedings, appoint advocates and counsels as they may in their absolute discretion deem fit and that they are hereby further authorized to file, initiate, sign, lodge any petitions, complaints, affidavits, applications, criminal complaints and any other legal proceedings as they may deem fit before any Court, tribunal or authority and to verify all such pleadings, complaints, plaints applications, affidavits, verifications and other documents as they may in their absolute discretion deem fit.

RESOLVED FURTHER THAT Mr. Pravin N. Patil, Company Secretary of the Company, be and is hereby further authorized to declare and affirm all plaints, complaints and give evidence, written statements, applications, petitions, affidavits and other necessary documents in the name of the Company and / or on its behalf and to appear before any judge, Magistrate or other officer empowered by law to hear any suit or complaint or proceedings relating to or connected with the subjects mentioned earlier hereinabove and to engage advocate/s lawyer/s agents/s from time as they may in their absolute discretion deem fit.”

CERTIFIED TRUE COPY
 For BENZO CHEM INDUSTRIES PVT. LTD.



GAURAV MOHATTA
 Whole Time Director



BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

Review Application of 2022(WZ)

IN

Original Application No. 124/2017(WZ)

Benzo Chem Industrial Private Limited

...Applicant

Versus

Arvind Manohar Mahajan & Ors.

...Respondent

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s/d

Advocate of Applicant

MZM Legal LLP

Advocate for Applicant

1 - D, 1st Floor, One Forbes

Dr. V. B. Gandhi Marg Kalaghoda,

Mumbai 400 001

Email: lawyers@mzmlegal.com



**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

**Review Application of 2022(WZ)
IN
Original Application No. 124/2017(WZ)**

In the matter of Order dated 29
August 2022, passed by the
Hon'ble National Green Tribunal,
(Western Zone Bench) in
Original Application 124 of 2017

And

In the matter of Section 19 of the
National Green Tribunal Act,
2010 r/w Rule 22 of the National
Green Tribunal (Practice and
Procedure) Rules 2011

IN THE MATTER OF:

**M/s. Benzo Chem. Industries
Private Limited**

A Company incorporated under
the provisions of Companies Act
1956 and validly existing under
the Companies Act, 2013 having
its registered office at:

26/28-A, Cawasji Patel Street,
Fort, Mumbai 400001

Through its authorised signatory
Mr. Pravin N. Patel, 39 years, son



of Nathaji Patil, Designation:
Company Secretary

...Applicant/Original
Respondent No. 1

VERSUS

Shri. Arvind Manohar Mahajan

Age 48 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

...Respondent No. 1/
Original Applicant No. 1

Gita Arvind Mahajan

Age 42 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

...Respondent No. 2/
Original Applicant No. 2

Sopan Laxman Ekde

Age 62 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

...Respondent No. 3/
Original Applicant No. 3

Saguna Sopan Ekde

Age 63 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur



Dist: Buldana

...Respondent No. 4/

Original Applicant No. 4

Mangala Ravindra Mahajan

Age unknown, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 5/

Original Applicant No. 5

Ravindra Manohar Mahajan

Age 40 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 6/

Original Applicant No. 6

Umesh Purushottam Narkhade

Age 35 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 7/

Original Applicant No. 7

Nielsh Shankar Mahajan

Age 30 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 8/

Original Applicant No. 8

Shobha Shankar Mahajan



Age 55 years, Occupation:
Agriculturist; Resident of
Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 9/

Original Applicant No. 9

Ramesh Laxman Choudhary

Age 50 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 10/

Original Applicant No. 10

Nina Bajirao Tharkar

Age 57 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 11/

Original Applicant No. 11

Kadu Bajirao Tharkar

Age 40 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 12/

Original Applicant No. 12

Jankabai Ramesh Ekade

Age 40 years, Occupation:
Agriculturist

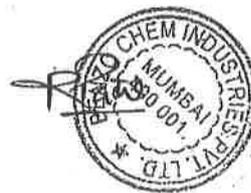


THE HUMBLE REVIEW
APPLICATION OF THE
APPLICANT ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. PURPOSE OF REVIEW APPLICATION:

- 1.1 The present Review Application is being preferred by the Applicant through its authorised representative- Mr. Pravin Patil assailing the Order dated 29.08.2022 passed by Special Bench of the Hon'ble National Green Tribunal, (WZ) in Original Application 124 of 2017 ("the impugned Order") u/s.19 of the National Green Tribunal Act, 2010, (hereinafter referred to as "the Act") r/w rule 22 of the National Green Tribunal (Practice and Procedure Rules 2011, (hereinafter referred to as "the Rules"), *inter alia*, holding the Applicant liable for environmental damages and on one hand directing the joint Committee of the CPCB and the State PCB to visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage, further directing MPCB to consider compliance of the ZLD and liability to environmental compensation on polluter pays principle for restoration of environment and furthermore directing the State PCB to close the unit of the Applicant if the violations are continuing and on the other hand for the past violations directing the Applicant to pay compensation



of INR 25 crores (Indian Rupees Twenty Five Crores Only) for a period prior to 5 years of filing of the Complaint up to October 2020 to be deposited with Original Respondent No. 2 for being utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months.

A copy of the Order dated 29.08.2022, is annexed hereto and marked as ANNEXURE 'A'.

- 1.2 The Applicant states that the Impugned Order passed by the Hon'ble Tribunal prima facie does not take cognizance certain crucial facts and evidence that form a part of the proceedings on record before this Hon'ble Tribunal in the Original Application and hence is an error that is apparent on the face of record.

2. **BRIEF FACTS LEADING TO THE PRESENT REVIEW APPLICATION:**

- 2.1 The Applicant is a private limited Company incorporated in 1987 under the Companies Act, 1956 having its registered office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001. It is engaged in the business of manufacturing and supplying of pharmaceutical, agro intermediates, speciality chemicals, and biocides in India. The Applicant started its first plant in Jalgaon. It has two manufacturing units at MIDC industrial area, Dasarkhed village, Malkapur.



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Buldana, Maharashtra (“**said units**”) which is an industrial area. One of the said units is situated at Survey No. B26, 27 and 14 and 15 and the other at Survey No. B24 and 25. The Applicant is a 24 year old Company and the said units of the Applicant employ approximately 800 (hundred) people from the local area. Apart from that, additional workmen are also indirectly employed through transportation, sales, and distribution centres. Thus, livelihood of more than 3000 (three thousand) families depends completely on the functioning of the said units of the Applicant.

- 2.2 Respondents No. 1-13 (“**Original Applicants**”) are agriculturists who possess agricultural lands in Daserkhed village.
- 2.3 Respondent No. 14 (“**Original Respondent No. 2**”) is the State Pollution Control Board and is responsible for implementing various environmental legislations and monitoring the environmental degradation and ecological imbalance in the state of Maharashtra.
- 2.4 Respondent No. 15 (“**Original Respondent No. 3**”) the nodal Investment Promotion agency under the Government of Maharashtra. It provides businesses with infrastructure such as land, roads, water supply, drainage facilities and street lights etc.
- 2.5 Respondent No. 16 (“**Original Respondent No. 4**”) is the Junior Inspector of factories, Akola and is responsible for



inspecting and ensuring that every factory has effective arrangement for safety of the workers and treatment of wastes.

2.6 The Original Applicants initiated proceedings on 11.07.2017 before the Hon'ble Tribunal under the provisions of the Act by filing Original Application No. 124 of 2017 (WZ) ("**Original Application**"). The Applicant was arraigned as Respondent No. 1. The Maharashtra Pollution Control Board ("**MPCB**"), the Maharashtra Industrial Development Corporation ("**MIDC**"), and the Junior Inspector of Factories were arraigned as the other Respondents.

2.7 The Original Applicants primarily raised concerns on the land and well water being affected due to discharge of hazardous effluents affecting the cultivation of crops and the land being unfit for cultivation. The Original Applicants on these primary environmental concerns prayed for the following reliefs:

- (i) Direct the closure of the Applicant prohibiting it from operating, manufacturing, and producing any chemicals in its premises at Dasarkhed, Distt Buldana,
- (ii) Direct the Applicant Company to pay suitable compensation to each of the Applicants towards the loss caused due to degradation of this lands and water as well.



- (iii) Direct the Respondent No, 2,3,4 to take immediate measures in order to prevent further degradation of land well water, if necessary, by issuing interim orders,
- (iv) Grant any other relief which this Hon'ble Tribunal may deem it fit in the facts and circumstances of the case including the costs of the present Original Application.

2.8 It is humbly submitted that the Original Applicants while praying for the above reliefs allegedly stated in the Original Application that the Applicant started showing its environmentally hazardous effects in 2010 on adjoining agricultural lands and the wells situated within its vicinity and the lands became unfit for cultivation due to the alleged constant discharge of uncontrolled and untreated effluent into the agricultural fields.

2.9 The Original Applicant stated that due to such alleged pollution, the villagers resolved to cancel the "no objection certificate" earlier granted to the said units and requested the Collector to do so immediately. However, at a meeting held in presence of Sub-Divisional Magistrate, office bearers of Applicant and the Original Applicants, the Applicants/Original Respondent No. 1 stated that it would carry out remedial actions, if required, in the said units.



2.10 It is further submitted that the Original Applicants however, themselves at paragraph 4.18 state that **the Respondent company pursuant to the directions issued by the Divisional Magistrate, made some temporary arrangements were made within its premises for discharging trade effluence of the industry and that due to such temporary measures by the Respondent Company, the nuisance to the land and the well water could not immediately detected.**

2.11 However, the Original Applicants state that somewhere in Jan 2017 after heavy rainfall, the villagers allegedly again found that the nearby area of the Applicants/Original Respondent No. 1 became reddish, and some chemical came out of the land.

2.12 The Original Applicants and/or certain unknown persons took water samples collected and got them tested with the Food Hygiene and Health Laboratory -Pune, NABL accredited Lab. Thereafter the Food Hygiene and Health Laboratory gave its report on 18.04.2017. It allegedly showed the presence of chemical substances in the samples which were much more than the permissible limits based on which alleged the Original Applicants filed the Original Application.

A copy of the Original Application is hereto annexed and marked as ANNEXURE 'B'.



- 2.13 Thereafter notice was received by the Applicant on 24.07.2017. The Applicant filed Miscellaneous Application no. 299/2017 raising a preliminary objection that the Original Application was barred by limitation.
- 2.14 The Applicant filed its reply on 01.10.2017.
- 2.15 The Reply of Original Respondent No. 2 i.e., MPCB was filed on 24.10.2017.
- 2.16 In its Reply, the Applicant/Original Respondent No. 1 submitted that the Original Application as filed by the Original Applicants was barred by limitation under section 14 of the Act as the case of action *first arose in 2010 and the same had been filed in the year 2017. It also stated that the Original Applicants were merely making submissions in the dark without any substantive proof that the alleged effluents were from the said units and that the authorized persons of the Original Respondent No 2 and Original Respondent No 4 have regularly visited the factory and specifically observed that there is no discharge of industrial effluent outside the factory premises.*
- A copy of the reply along with the annexures as filed by the Applicants is hereto annexed and marked as ANNEXURE 'C'.



2.17 It is pertinent to note that there are other industrial units also in operation near the said units. The Original Respondent No.2 is a regulatory authority responsible for enforcement of pollution control and environment Laws with wide powers and is taking strict actions against any kind of violation. However, since there were no existing violations as alleged by the Original Applicants such violations were thus never observed during their frequent and surprise visits of the Original Respondent No. 2.

2.18 The Applicant had also filed a Miscellaneous Application No. 299 of 2017 ("M.A."), raising Preliminary Objections to the O. A. No. 124 of 2017, the same being barred by limitation. The submissions of the Applicant on the point of limitation were heard by the Hon'ble Tribunal on 31.10.2017. However, the Ld. Counsel appearing on behalf of the Original Applicants sought time to rebut the arguments put forth on behalf of the Applicant and hence, the M.A. was only partly heard before the Hon'ble Tribunal.

2.19 It is humbly submitted that the Original Respondent No. 2 in its reply dated 24.10.2017 verified and stated that **both the said units had been granted the requisite contents and clearances i.e. Consent to Establish, Consent to Operate and Environmental Clearance. It also stated that during its visits dated 06.02.2016 and 07.02.2016, the MPCB had observed both units were under compliance mode. It is further submitted that as set out in paragraph**



2(a) of the Original Respondent No. 2's Reply the following were in place:

i) The Respondent Industry had provided complete EMS which includes Conventional effluent treatment plant for Low COD value effluent and Thermal Treatment technology for High COD Value consisting of collection tank, oil and grease tank, neutralization tank, primary clarifier, aeration tank (Diffused aeration system), secondary clarifier, Sludge Drying Beds SDB, Treated effluent storage tank, pressure sand Filter and activated carbon filter 3 stage Multiple Effect Evaporator (capacity 100 KL/Day). (MEE). During the visit ETP was found in operation. Condensate water from Cooling tower and mother liquor is again recycled in MEE for further treatment. The solid waste generated from MEE salt is disposed off by sale and achieved zero discharge.

ii) No discharge of untreated /treated effluent was observed within and outside the factory premises. And Industry has provided Air Pollution Control System consisting of scrubber to HCL Plant, wet scrubber to ammonia plant. The Respondent Industry has provided scrubber to the Bromination Plant and Bromination Plant was not in operation.

iii) The Industry had provided boiler of capacity 6 T/hr. The air pollution control system consisting of



mechanical dust collector has been provided as well as thermopack boiler of capacity 6 lacs kilo cal/hr. The Air pollution control system consisting of multi cyclone separator followed by chimney of 30.5. mtrs has been provided (common chimney to both boilers).

2.20 It is further submitted that the Board also visited the two industries on 07.09.2017 and the same has been as set out in paragraph 5 of the Reply of Original Respondent No.2 which again reported that:

- i) During visit industry was found in operation.
- ii) ETP was found in operation.
- iii) Treated effluent is being utilized for cooling & scrubbing activities.
- iv) Fabric bag filter dust collection system followed by chimney of height 33 meters to boiler (capacity of 6 TPH) scrubber provide to chlorination plant, Hydrolysis plant & Bromination plant with vent.
- v) APC system were found in operation.
- vi) There was no any discharge of effluent outside the factory premises.
- vii) Industry has constructed additional tank for collection of seepages/leakages with motor pump at near ETP & the same collected seepages/leakages treated in ETP.

A copy of the reply along with the annexures as filed by the Original Respondent No. 2 is hereto annexed and marked as ANNEXURE 'D'.



2.21 Thereafter, during the course of hearing on 08.12.2017, the Ld. Counsel appearing on behalf of Original Applicants submitted that the Applicant on account of bonafide good faith and care had duly compensated the Original Applicants at Rs. 40,000/- per acre of land and sought permission to withdraw the Original Application. However, the Hon'ble Tribunal held that the question raised in the present Application was not merely concerning individuals, but also the pollution of land and groundwater. Therefore, the Hon'ble Tribunal vide its order dated 08.12.2017, noted that the Applicant was directed to engage the National Environmental Engineering Research Institute, Nagpur ("NEERI") for assessing the soil and groundwater pollution due to percolation of waste water and that the report was due in 3 months.

2.22 Pursuant to MPCB Directions and order of this Hon'ble Tribunal dated 08.12.2017, NEERI was engaged to study the activities of the said units on soil and the groundwater.

2.23 NEERI submitted its final Report to the Applicant on June 2019 ("NEERI Report"). The Report contained description of the raw material used in the said units, the control systems for control of air and water pollutions and analysis of the soil and water samples taken from surrounding areas and wells of the said units. The main objectives as set out in **paragraph 1.1 of the NEERI Report** were:

- *To conduct an audit of the manufacturing process and material balance.*



- *To evaluate technical adequacy of the ETP and ZLD plant.*
- *To collect and preserve the groundwater and soil samples (around 25-30 samples in total for 2 km radius) from identified locations using standard methods:*
- *To analyse groundwater and soil sample for physio-chemical and heavy metals parameters with respect to manufacturing processes.*
- *To assess the impact of industrial activity on the soil and groundwater.*

2.24 It is pertinent to note that the scope of the study was quite narrow and was conducted to assess the impact of the industrial activities of the said units on the soil and groundwater under an erroneous assumption that Benzo Chem was the only industry within the MIDC area which was manufacturing and discharging effluents.

2.25 The NEERI Report in Section 2.2.2 (Water) notes

Both the units have separate effluent treatment plant along with multi effect evaporator which helps them maintain a zero liquid discharge policy.

...Each of the ETP contains a collection tank to collect and equalise the influent from various production units.

The collection tank is followed by neutralisation tank in which lime/caustic is added as per the requirement.

Further the water from neutralisation tank is taken to



clarifier and further to primary effluent settling tank. Aeration is carried out after settling and followed by secondary clarifier and settling. The water from secondary settling tank is taken to pressure filters and activated carbon filters. Finally, the filtered effluent is taken to Multi Effect Evaporator so that there is absolutely not liquid discharge....The sludge from the clarifiers and settlers are taken to drying beds and sent to hazardous waste facility.

2.26 The NEERI Report in Section 4.1 (Material Summary) also states

The ETPs of both the units 1 and 2 have sufficient capacity to take up the liquid load generated by each of the units. The plants have enough spare capacity to take up the shock loads as well.

The MEE at the end of the plants, makes it possible for the industry to maintain zero liquid discharge (ZLD)

The air scrubbers too have sufficient capacity to handle the loads of air pollutants generated in each unit.

A copy of the final NEERI Report is hereto annexed and marked as ANNEXURE 'E'.

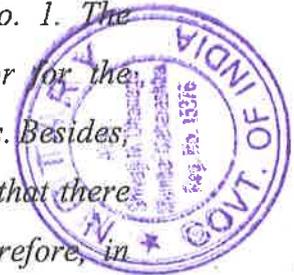
2.27 Despite not being responsible for the pollution, the Applicant, as a matter of abundant caution and keeping up with the Company's ethos of protecting the environment and the health of all the stakeholders during manufacture and supply of its products, initiated the remedial recommendations of the NEERI Report. After undertaking



such remedial measures, the Applicants filed a Compliance Affidavit dated 25.05.2021 which set out the remedial actions undertaken by the Applicants. The Compliance Affidavit states the following in **paragraph 11 of the Compliance Affidavit:**

A. Restoration of Well Water of W8

(e) *The restoration of W8 commenced on 21.03.2021 and was completed on 05.04.2021 i.e. within 15 days. In order to restore W8, the Respondent No. 1 pumped out the water from W8 by installing pipes and connecting the same to the water tankers that were used to transport the polluted OTAR water from W8 to ETP of the Respondent No. 1. The Respondent No 1 had to install pipes admeasuring around 400-500m long from W8 to the water tankers used for transportation. The pipes that were installed for pumping of the well water had to be dismantled daily as Gut No. 40 was not in the private ownership of Respondent No. 1. The Respondent No. 1, had deployed its own labor for the purpose of the installing and dismantling the pipes. Besides, laying down of the pipes, it is pertinent to note that there was no electricity available at site of W8. Therefore, in order to pump the polluted water from W8, the Respondent No. 1 had stationed a diesel generator acquired by the Respondent No. 1 for pumping the water. The Respondent No. 1 would run the diesel generator for 4 hours approximately daily to pump the pouted water from W8. The diesel required for running of the Diesel Generator was also procured by the Respondent No. 1 on its own. During the 4 hours that the generator was in operation, approximately*

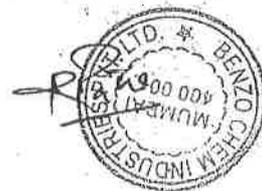


two trips of water tankers could be completed. Therefore, approximately, 34,000 L of water was pumped out daily from W8, filled into water tankers and transported to the ETP of the Respondent No. 1 for further treatment.

(f) The Respondent No. 1 issued a Work Order to Shivraj Water Suppliers, Daserkhed dated 17.11.2020. As per the work order issued to Shivraj Water Suppliers, it was agreed that, the Water Supplier would provide water tankers having capacity of 17,000 L for which, the Respondent No. 1 would be paying an amount of Rs. 4,000/- per trip. In order to restore W8, Shivraj Water Suppliers had to undertake 24 trips between 23.03.2021 and 05.04.2021 (Barring the days when the unit of the Respondent No. 1 was closed). The Respondent No. 1 has pumped 4,08,000 Litres of polluted water from W8 and the same has been treated at the ETP of the Respondent No. 1. For the purpose of transporting 4,08,000 L of water from W8 to the ETP of the Respondent No. 1, the Respondent No. 1 paid an amount of Rs. 96,000/- to Shivraj Water Suppliers. This amount was paid to Shivraj Water Supplier through NEFT from authorized account of the Respondent No. 1. As on date, the restoration work of W8 is complete.

B. Restoration of Well Water of W1

... Since, there were bushes and vegetation on Gut No. 29, the Respondent No. 1 paved a way of about 400-500 m in and around Gut No. 29 so that the tankers appointed by the Respondent No. 1 could reach W1. After the vegetation was cleared, the work of the restoration of W1 commenced on 03.12.2020 and was completed on 23.12.2020 i.e. within 20



days. In order to restore W1, the Respondent No. 1 pumped out the water from W1 by installing pipes and connecting the same to the water tankers that were used to transport the polluted water from W1 to ETP of the Respondent No. 1. The Respondent No. 1 had to install pipes admeasuring around 300m long from W1 to the water tankers used for transportation. The pipes that were installed for pumping of the well water had to be dismantled dally as Gut No. 29 was not in the private ownership of Respondent No. 1. The Respondent No. 1, had deployed its own labor for the purpose of the installing and dismantling the pipes TAR daily. Besides, laying down of the pipes, it is pertinent to note that there was no electricity available at site of W1. Therefore, in order to pump polluted water from W1 the Respondent No. 1 had stationed a diesel generator acquired by the Respondent No. 1 for pumping the water. The Respondent No. 1 would run the diesel generator for 4 hours approximately daily to pump the polluted water from W1. The diesel required for running of the Diesel Generator was also procured by the Respondent No. 1 on its own. During the 4 hours that the generator was in operation, approximately two trips of water tankers could be completed. Therefore, approximately, 34,000 L of water was pumped out daily from W1, filled into water tankers and transported to the ETP of the Respondent No. 1 for further treatment.

c) The Respondent No. 1 issued a work order to Shivraj Water Suppliers, Dasarkhed dated 17.11.2020. As per the Work Order issued to Shivraj Water Suppliers, It was



22

agreed that, the Water Tanker Supplier would provide water tankers having capacity of 17,000 Liters for which, the Respondent No. 1 would be paying an amount of Rs. 4,000/- per trip....In order to restore W1, Shivraj Water Suppliers had to undertake 30 trips between 03.12.2020 and 23.12.2020 (barring the days when the Respondent No. 1 unit was closed). The Respondent No. 1 has pumped 5,10,000 L of polluted water and the same was treated at the ETP of the Respondent No. 1. As on date the restoration work of W1 is complete.

C. Restoration of Well Water of W7

The restoration of W7 commenced on 11.02.2021 and was completed on 25.03.2021 i.e. within 43 days. However, It Is stated that the duration for restoring W7 was little on the longer side as for substantial period the water tankers appointed by the Respondent No. 1 were under maintenance for a period of about 10 days. Once the tankers were available, the Respondent No. 1 re-commenced with the restoration work of the W7. In order to restore W7, the Respondent No. 1 pumped out the water from W7 by installing pipes and connecting the same to the water tankers that were used to transport the polluted water from W7 to ETP of the Respondent No. 1. The Respondent No. 1 had to install pipes admeasuring around 400m long from W7 to the water tankers used for transportation. The pipes that were installed for pumping of the well water had to be dismantled daily as Gut No. 39 was not in the private ownership of Respondent No. 1. The Respondent No. 1, had



deployed its own labor for the purpose of the Installing and dismantling the pipes. Besides, laying down of the pipes, it is pertinent to note that there was no electricity available at site of W7. Therefore, in order to pump the polluted water from W7, the Respondent No. 1 had stationed a diesel generator acquired by the Respondent No. 1 for pumping the water. The Respondent No. 1 would run the diesel generator for 4 hours approximately daily to pump the polluted water from W7. The diesel required for running of the Diesel Generator was also procured by the Respondent No. 1 on its own. During the 4 hours that the generator was in operation, approximately two trips of water tankers could be completed. Therefore, approximately, 34,000 L of water was pumped out daily from W7, filled into water tankers and transported to the ETP of the Respondent No. 1 for further treatment. The Respondent No. 1 issued a work order to Shivraj Water Suppliers, Dasarkhed dated 17.11.2020. As per the Work Order issued to the Shivraj Water Suppliers, it was agreed that, the Water Tanker Supplier would provide water tankers having capacity of 17,000 Liters for which, the Respondent No. 1 would be paying an amount of Rs. 4,000/- per trip.....

In order to restore W7, Shivraj Water Suppliers had to undertake 21 trips between 11.02.2020 and 25.03.2021 (barring the days when the Respondent No. 1 unit was closed and the days when the water tankers used by the Respondent No. 1 were under maintenance). The Respondent No. 1 has pumped 3,57,000 L of polluted water and the same was treated at the ETP of the Respondent No.



1. For the purpose of transporting 3,57,000 L of water from W7 to the ETP of the Respondent No. 1, the Respondent No. 1 paid an amount of Rs. 84,000/ to Shivraj Water Suppliers. This amount was paid to Shivraj Water Supplier through NEFT from authorized account of the Respondent No. 1.

e) As on date, the restoration work of W7 is complete.

2.28 As set out in **paragraph 12 of the Compliance Affidavit**, the Applicant has carried out the following measures to restore the soil environment:

A. The CSIR-NEERI Report of 2021 has found that no fine chemicals were obtained in the samples taken from 15 cm and 30 cm below the surface. However, the soil samples from query pit area (E1), contained fine chemicals. In order to restore the soil environment CSIR-NEERI had recommended to send the contaminated soil to the Common Hazardous Waste Treatment and Disposal Facility (CHWTDF).

B. The query pit area (E1) was completely dry by March 2021, thereafter the Respondent No. 1 commenced the restoration of the query pit area (E1). For the purpose of restoring the query pit area the Respondent No. 1 undertook the excavation of the polluted soil at the query pit area (E1) using a JCB and got the entire affected area by excavation. The Excavation work for entire polluted area was completed by the Respondent No. 1 by May 2021. A total of about 3 to 4 tons of polluted soil was excavated by Respondent No. 1. The excavated soil was collected by Respondent No. 1 in HDPE Woven Bags and is currently stocked at the



earmarked Hazardous Waste Storage area of the Respondent No. 1.

D. The Respondent No. 1 vide a letter dated 18.05.2021 addressed to the 25 MAY 2 Respondent No. 2 has sought the permission of Respondent No. 2 to allow the Respondent No. 1 to transfer the excavated soil to a Common Hazardous Waste Treatment and Disposal Facility (CHWTDF) and in compliance to the recommendations of CSIR-NEERI Report of June 2019.

A copy of the Compliance Affidavit dated 25.05.2021 filed by the Applicant is hereto annexed and marked as ANNEXURE 'F'.

- 2.29 After hearing the parties, the Hon'ble Tribunal was pleased to pass the impugned Order, annexed at ANNEXURE 'A' hereto. Being aggrieved by the impugned Order, the Applicant are preferring the present Review Application.

3. CRUCIAL FACTS FOR THE HON'BLE TRIBUNAL'S CONSIDERATION THAT WERE NOT CONSIDERED BY THE TRIBUNAL WHILE PASSING THE IMPUGNED ORDER

- 3.1 The Applicant humbly submits that the Hon'ble Tribunal has failed to take into consideration the true and complete facts and compliances which were essential for a proper adjudication of the Original Application. The Applicant also states that certain new and important evidence have been discovered which could not be produced by the Applicant at



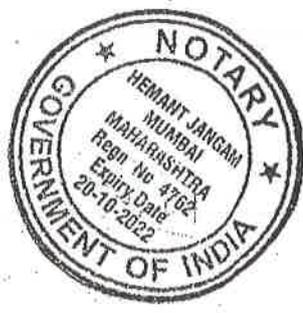
the time when the impugned Order was made. Hence, the Applicant would like to bring the complete facts on record.

A. Applicant is a company established to cater to foreign standards and principles while maintaining spotless and clean record with respect to the Environment Sustainability and Protection.

3.2 As mentioned above the Applicant is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing and supplying of pharmaceutical, agro intermediates, speciality chemicals, and biocides in India. It has established a global presence through the export of its range of products to USA, Brazil, Europe, Japan, Korea, Taiwan etc and has won numerous accolades for its products and i.e., safety measures such as the ISO 9001:2015, ISO 14001:2015 & ISO 45001:2018. Copies of the awards and recognitions received by the Applicant are hereto annexed and marked as ANNEXURE G.

B. The Applicant is located in MIDC industrial area in Dasarkhed village, Malkapur which is a heavy industrial area surrounded by other industries.

3.3 The Applicant has two manufacturing units in the MIDC industrial area in Dasarkhed village, Malkapur. It started the first unit in 1994 at Survey No. B26, 27, 14 and 15 in MIDC industrial area, Daserkhed, Malkapur and the second unit in



2009 at Survey No. B24 and 25. Both the said units are engaged in manufacturing various intermediate chemicals which are further used in the manufacture of pharmaceutical and agro products.

- 3.4 The Malkapur industrial area is a major industrial area developed by MIDC, which is a corporation of Ministry of Industries & Labour, Government of Maharashtra, for development & maintenance of Industrial infrastructure in state and promoting economic growth of regions within the state.
- 3.5 The industrial area has other numerous chemicals, agro-chemical and oil processing factories and has a common underground drainage system. A map of the area setting out the locations of the said units and the various industries located in the MIDC industrial area, Daserkhed is annexed hereto and marked as ANNEXURE 'H'.
- 3.6 As it can be observed, there are numerous industries located near the lands of the Original Applicants and the some of these industries stand between the said units and the land of the Original Applicants. It is humbly submitted by the Applicant that the fact of the presence of other industries and the possibility of them being liable for the alleged groundwater pollution.



C. The Applicant has state of the art ETP and ZLD facility.

3.7 The said units were also granted Consent to Establish (CTE) on 08.08.97 by the Maharashtra Pollution Control Board ("MPCB") and are also granted Consent to Operate (CTO) periodically first on 11.09.98. The most recent CTO of the said units were granted on 05.10.21. The said units were granted Environment Clearance (EC) under EIA Notification 2006 by the Government of Maharashtra periodically and the most recent EC was provided on 10.11.2020. It is also pertinent to mention that these consents and environmental clearance were never challenged by the Original Applicants neither in the Original Application nor before any authority till date. A copy of the EC, CTO and CTE of the said units is annexed hereto and marked as ANNEXURE 'I' - Colly.

3.8 The said units have a well-functioning and state of the art Effluent Treatment Plant (ETP) having primary, secondary and biodegradation facility and have achieved Zero Liquid Discharge (ZLD) in the said units. The said units are the only industrial unit in the MIDC industrial area, Malkapur with a well-functioning ETP facility and the only one to have achieved ZLD. Copies of the schematic diagrams of the ETP and ZLD detailing out the process of effluence treatment in the said units is annexed hereto and marked as ANNEXURE 'J' - Colly.



3.9 Respondents 1-13 submit that they noticed environmentally hazardous effects of the said units of the Applicants in 2010 on adjoining agricultural lands and the wells situated within its vicinity. A meeting was called with the representative of the Applicant and the Gram Panchayat. It is submitted that it was an isolated incident occurring on account of heavy rainfall in July 2010 that a small quantity of effluent got mixed overflow with the rainwater runoff. The Original Respondent No. 2 Board had also issued a letter dated 30.07.2010 to the Applicant regarding the said incident. As the said incident was brought to the knowledge of the Applicant, the Applicant took immediate steps for mediating the situation including lifting of the said discharge to the ETP and also subsequently placing tarpaulin covering over such spaces to prevent further occurrence of such an incident. Hence, subsequent to the complaints raised by the villagers, the Applicant took remedial measures to remedy the situation and the same was also noted by the MPCB.

3.10 It is pertinent to mention here that the said units of the Applicant have continued to comply with the regulatory environmental standards post the isolated incident. Regular audits by international agencies are also conducted on the safety and environmental mechanism of the said manufacturing units to ensure adherence with international standards. Regular site visits by the officials of MPCB have



also confirmed that the units were operating on Zero Liquid Discharge (ZLD) mode and the Effluent Treatment Plant (ETP) was operational and in working condition. A copy of the site visit reports of the said units by MPCB over the years is hereto annexed and marked as ANNEXURE 'K' - COLLY.

3.11 It is submitted that a perusal of the site reports between 2011-2020 show that the MPCB officials have made note of the state of the art and functional ETP and pollution control systems of the said units. The site visit reports and particularly the one on 06.02.2016 (i.e. just before filing of this Application) have categorically stated the following:

B. ...During visit ETP Was found in operation as well as MEE was found in operation. They are recycling the condensate water for cooling tower. The mother liquor is again recycled in MEE for treatment. The solid waste is generated from MEE i.e. the salt is disposed off by sale. They have achieved zero discharge.

C. No any discharge of untreated/treated effluent was observed within & outside the factory premises.

Hence, it is humbly submitted that the said units were always compliant with the statutory requirements and have always been held to be compliant by the MPCB officials.

3.12. At the risk of being repetitive it is once again reiterated that the Original Respondent No.2 conducted multiple surprise visits and the reports which have already being annexed in

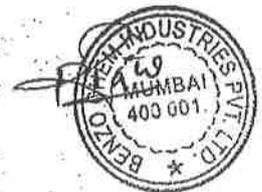


its reply which categorically state positive things and note adequate compliances of the Said units thereby observing no discharge of effluents.

D. By the admission of the Original Applicants for the Period Prior to 2010 and the Period between 2011-December 2016 it can be safely assumed that there has been no discharge of effluents in the Land or the Well water.

3.13 The Original Applicants started raising their complaints for the first time in 2010. Pursuant thereto and as a matter of abundant precaution and a Company catering to best Indian Clients and foreign clients to avoid any reputational damage undertook necessary steps to resolve the grievances of the Original Applicants. It is submitted that at all times the Applicant was a Company determined to have the best and environment friendly mechanisms of doing its operations having the best ETP in place since inception. It is evident from the facts on record that there is and has been no complaint from period of 2011-early 2017 by the Original Applicants. As such there was no question of any discharge of effluents in the land leading to any land degradation or well water contamination for these years.

3.14 Infact the above is corroborated by the reliance of the Original Applicants on the structure being put in place and by the observations of the MPCB during its visits dated



06.02.2016 and 07.02.2016, and in 2017 where it had observed things in compliances regarding the said units.

E. Sample Collection submitted by the Original Applicants to the Food Hygiene and Health Laboratory was unsupervised.

3.15 It was in Jan .2017, that the Original Applicants noticed chemical effluents within their land and wells. The Original Applicants collected water samples on 14.03.2017 in the absence of any representative of the government authority or Applicant. The said samples were sent to Food Hygiene and Health Laboratory, Pune ("FHHL"). Based on a report dated 18.04.2017 by FHHL, the Original Applicants filed the Original Application.

3.16 In the Original Application, the Original Applicants have attributed the alleged contamination of groundwater to the actions of the Applicant without adducing any evidence regarding the same. As evident from the site visit reports just before the filing of the present application and even after filing of the present Application, the ETP of the Applicant was functioning properly and no discharge outside the factory premises was noticed by the authorities. Hence, it can be reasonably concluded that contamination of the soil and ground water could not be attributed to the Applicant as the Applicant were fully compliant with the



norms laid down by the statutory authorities and had no discharge from the premises of the said units.

F. NEERI investigation and report did not take into consideration the possible discharge of effluents by other industries degrading the land and contamination of the well water.

3.17 During the hearing of the Original Application, Hon'ble Tribunal directed the Applicants to engage NEERI for assessing the soil and groundwater pollution due to percolation of wastewater. Hence, NEERI was appointed by the Applicant in compliance with the directions of MPCB and this Hon'ble Tribunal. In order to analyse the groundwater, samples were collected from open dug wells, bore wells and handpump located within 500 m and 2 kms periphery of the said units during the field visit. For the soil quality analysis, soil samples were collected within 500 m and 2 kms periphery of the said units. The collection of samples at the said units was conducted in two phrases – pre monsoon and post monsoon.

3.18 However, it is humbly submitted by the Applicant that there are other industries within the sampling collection radius of 500 m and 2 kms. The scope of the study was quite narrow and was conducted only to assess the impact of the industrial activities of the said units on the soil and groundwater. Instead, a comprehensive study detailing the raw materials and finished products of the nearby factories, the waste



treatment systems of the factories, and their proximity to the wells of the Applicants should have been carried out by NEERI to provide a true and fair report of the alleged groundwater contamination. Pertinently, the wells W1, W7 and W8 are adjacent to certain paper mills and the possibility that the wells may be contaminated by the effluents discharged from these paper mills has not been considered by the NEERI Report.

G. The NEERI report has discovered the presence of chemicals which are not used in the said units

3.19 It is also pertinent to note that in the NEERI Report, the presence of different chemicals and metals were studied in the wells. The findings of the NEERI Report are as provided in the tables below:

3.20 It is humbly stated by the Applicant that the NEERI Report has discovered certain chemicals and metals like iron and manganese which are neither the raw materials nor the finished products of the said units of the Applicants. Hence, the Applicant cannot be held liable for the presence of the chemicals. The Applicant humbly submits that the presence of these chemicals also speaks of the possibility that other factories excluding the said units of the Applicants may also be liable for polluting the groundwater.



H. the NEERI report has recognised the efficient ETP and ZLD facility of the applicant in its units

3.21 *The NEERI Report in Section 4.1 has aptly summarised the ETP of the Applicant as follows*

- *The ETPs of both the units 1 and 2 have sufficient capacity to take up the liquid load generated by each of the units. The plants have enough spare capacity to take up the shock loads as well.*
- *The MEE at the end of the plants, makes it possible for the industry to maintain zero liquid discharge (ZLD)*
- *The air scrubbers too have sufficient capacity to handle the loads of air pollutants generated in each unit.*

Hence, it is humbly submitted that the ETP plant of the said units was fully functional and has the capacity to treat effluents over and above the effluent currently being generated by the said units Applicant.

I. The Applicant undertook remedial actions in good faith

3.22 Despite not being responsible for the pollution, the Applicant, with bona fide intentions and keeping in mind its corporate social responsibility initiated and completed the remedial recommendations of the NEERI Report.

3.23 The Applicants spent huge sums of moneys to undertake bonafide and good faith remedial actions for restoration, treatment, welfare of the land and groundwater as well as towards compensation paid to the Original Applicants. Post



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completion of the remedial actions, the Applicant filed a Compliance Affidavit dated 25.05.2021 to highlight the same before this Hon'ble Tribunal. It is humbly submitted that the remedial actions were conducted by the Applicants in good faith and cannot be considered as an admission of responsibility for the pollution of the groundwater and soil. As noted by MPCB officials and in the NEERI Report, the said units have a fully functioning ETP system and have consistently achieved ZLD. Hence, the Applicants cannot be held liable for the said pollution.

J. Annual yield of Malkapur is increasing as seen from records

- 3.24 It is also humbly submitted by the Applicant that the annual yield of the Malkapur area has been increasing every year. The Applicant has recently come in possession of the annual yield reports of the Malkapur region and recent images of the growing crops in the lands of the Original Applicants. The Applicant craves leave of this Hon'ble Tribunal to produce the reports at a later stage and refer and rely upon the said reports as and when produced. As evident from a perusal of the reports, the yield of the region has been increasing and hence no harm to the crops, as stated by the Original Applicants, have been caused.

K. The Applicant is not responsible for the discharge of effluents or contamination of the land and well water



3.25 In light of the above facts which form a part of the record and the new evidence which has recently been surfaced with respect to the yielding crops the Applicant cannot be held responsible for the discharge of untreated effluents and therefore the compensation levied and directed to be paid by the Applicant in the strictest sense is unreasonable and erroneous for a Company who has since inception been committed to the treatment of effluents being discharged and the welfare of the environment and the Original Applicants.

GROUNDS

In view of the above facts and submissions the following are the grounds for the present review in the instant application which are without prejudice to each other.

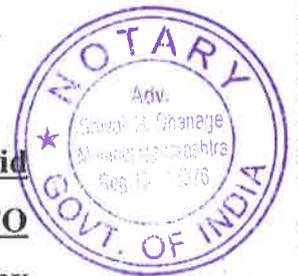
- A. The Impugned Order passed by the Hon'ble Tribunal is erroneous and is passed without appreciating the prima facie facts, and submissions on record in the Original Application and the same is required to be reviewed in light of the present Application.
- B. The Impugned Order passed by this Hon'ble Tribunal is erroneous and is passed without appreciating the evidence on record and tendered by the Applicant and the same is required to be reviewed in light of the present Application.



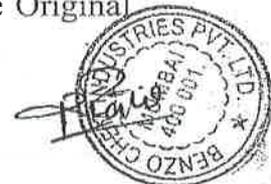
- C. The Hon'ble Tribunal erred in holding that the Applicant was patently non-compliant from 2010 till atleast 2.10.2020 where its units remained non-complaint.
- D. The Hon'ble failed in appreciating the fact that the Applicant was always compliant from the inception of its first unit since 1994 and thereafter.
- E. The Hon'ble Tribunal has failed to consider that from the period of 2011- 2017 there were no complaints and by the admission of the Original Applicants the structure for treatment was in place.
- F. The Hon'ble Tribunal failed to consider that multiple and regular site visit reports of MPCB post 2010 till 2017 confirm to the fact submitted by the Original Applicants that the treatment structure was in place and they categorically state that the ETP of the Applicant was operational and no discharge of effluents was observed within or outside the factory premises;
- G. The Hon'ble Tribunal failed to consider the fact that the Original Applicants have not produced any evidence to prove the discharge of effluents by the Applicant till before 2017 and has erroneously held the Applicants liable for the same.



- H. The Hon'ble Tribunal failed to take into consideration that ZLD status of the said units and has erroneously held them to be non-compliant with the CTO granted by MPCB on 26.04.2016.
- I. The Hon'ble Tribunal without appreciating all the facts and evidence on record and placed by the Applicant erred in directing the constitution of a Joint Committee.
- J. The Hon'ble Tribunal erred in bestowing the state authorities and the joint committee directed to be formed with the power to perform core adjudicatory powers of assessing the compensation and further assessing the closure of the Unit.
- K. The Hon'ble Tribunal has erred in abdicating judicial functions to the Join Committee under its Impugned Order and had further failed to appreciate that the role of committees is only to perform administrative actions to assist the Tribunal.
- L. The Hon'ble Tribunal failed to consider that the said units of the Applicant had all applicable EC, CTO and CTE in place which have not been challenged by the Original Applicants till death.



- M. The Hon'ble Tribunal has erred in directing the State PCB for closure of the unit leading to civil death of the Applicant.
- N. The Hon'ble Tribunal has failed to consider that the units of the Applicant employ 800 employees and provide livelihood to approximately 3000 families and directing and is effectively contributing to the economy of the country and thus ought not be directed to close down despite all the compliance of the Applicant placed on record.
- O. The Hon'ble Tribunal has failed to consider the presence of other factories in the Malkapur industrial area and the possibility of the other factories being responsible for the deterioration in groundwater beyond the acceptable limits.
- P. The Hon'ble Tribunal has erroneously relied on the NEERI Report which was made with a limited scope and without taking into consideration the other industries in the area and the analysis of the growth of crops in the area which is very well established by the reports of Krishi Ayog.
- Q. The Hon'ble Tribunal has failed to consider the proximity of other factories to the land of the Original



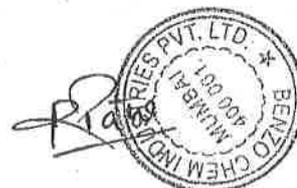
Applicants and has failed to consider the possibility of liability of the same factories for the groundwater pollution.

- R. The Hon'ble Tribunal failed to take into consideration that the Original Applicants have not held other factories liable nor taken any action against other factories which are adjacent to the lands of the Applicants.
- S. The Hon'ble Tribunal failed to consider and appreciate the fact that the Applicant has already taken steps to restore the environment despite having the state-of-the-art ETP and ZLD facilities.
- T. The Hon'ble Tribunal failed to appreciate that majority of effluents/chemicals observed in the NEERI report are neither the raw materials nor the finished products of the Applicant.
- U. The Hon'ble Tribunal has erred in levying compensation of INR 25 Crores for the period of 2012-2020 on the Applicant under the strictest sense based on certain principles laid on various judgements the facts of which are entirely different from the instant case of the Applicant
- V. The Hon'ble Tribunal has while determining the liability has erred in holding that the turnover of the



Applicant for the past 10 years has been 200- 300 crores.

- W. The Hon'ble Tribunal has failed to consider the factors to be taken into account as set out in the Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund introduced by the Central Pollution Control Board
- X. The Hon'ble Tribunal has failed to consider the formula determined by the formula set out in the Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund for determining the compensation in the impugned Order.
- Y. The Hon'ble Tribunal has failed to take into consideration the good faith remedial actions already undertaken by the Applicant towards the land and the decontamination of the underground well water as well as compensation paid for the well fare of the Original Applicants and the farmers.
- Z. The Hon'ble Tribunal ought to take into consideration the recently available crop data from Krishi Ayog for the years 2010 -2020 which establishes the increase in crop yield in the Malkapur District.



AA. The Hon'ble Tribunal failed to appreciate that the application filed by the Original Applicants was barred by limitation since the same was not filed with the period of six months from the date of the first cause action as per the provisions of the Act.

4. The Applicant states that the impugned Order dated 29.08.2022 is erroneous and has failed to consider prima facie facts on record in the Original Application and certain material facts which are being brought on record by the Applicant in this Review Application and hence the impugned Order needs to be reviewed in light of the same.
5. The Applicant states that this Hon'ble Tribunal has jurisdiction to try the present Review Application and has the powers under Section 19 of the Act and Rule 22 of the National Green Tribunal (Practice and Procedure) Rules 2011 to review its own orders.
6. Applicant states that the Applicant have a good case on merits. The Applicants state that if the impugned Order is not stayed and reviewed, the Review Application would become infructuous and the Applicant would be held erroneously liable for the environmental damage as well as be liable to pay compensation of INR 25 Crores (Indian Rupees Twenty-Five Crores Only) for the alleged damages caused or be at the risk of closure leading to its death.



7. Applicant states that it is expedient and in the interest of justice that this Hon'ble Tribunal ought to protect the Applicant by reviewing the impugned Order and staying the effect, operation and implementation of the impugned Order dated 29.08.2022.
8. The Applicant state that no prejudice, harm, or loss will be caused to the Respondents if the reliefs prayed for are granted to the Applicant. On the contrary if the same are not granted, the Applicant will suffer grave prejudice, irreparable and irretrievable harm, loss and damage which cannot be compensated in terms of money.
9. The Applicant craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.
10. The Applicant craves leave and liberty of this Hon'ble Tribunal to produce documents forming part of the record and proceedings in the Original Application as and when required.
11. The Applicant states that the impugned Order dated was received by the Applicant on 29.08.2022 and, therefore, the present Review Application is within limitation and is not barred by Law of Limitation.



12. The Applicant states that they have not filed any Review Application or other proceedings before this Hon'ble Tribunal or any other Tribunal on the subject matter of this Review Application.
13. The Applicant state that they have paid the requisite Tribunal fees.
14. **APPLICANT, THEREFORE, HUMBLY PRAYS THAT:**

a) This Hon'ble Tribunal be pleased to review the judgment and order dated 29.08.2022 and further be pleased to modify it to the extent of setting aside the order, thereby dismissing the Original Application 124 of 2017.

b) Pending the hearing and final disposal of this Review Application, this Hon'ble Tribunal be pleased to stay the effect, implementation and operation of impugned Order dated 29.08.2022.

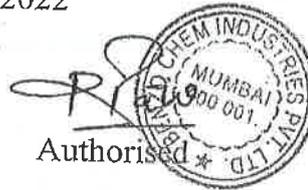
c) That ad-interim and interim order in terms of prayer (c) above be granted.



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- d) That cost of this Review Application be provided.
- e) That such other and further reliefs as the nature and circumstances of the case may require, be granted.

Dated this day of September 2022



Authorised
Representative of
Applicant

H. Jangankar

Advocate of Applicant

MZM Legal LLP

Advocate for Applicant

Office: 1 – D, 1st Floor,

One Forbes, Dr. V. B. Gandhi Marg,

Kalaghoda, Mumbai 400 001

Email: lawyers@mzmlegal.com



VERIFICATION

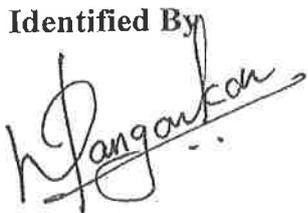
I, Mr. Pravin N. Patil, son of Nathaji Patil, Age 39 years
Designation: Company Secretary, do hereby solemnly declare and
state that I am the authorised representative of the Applicant
abovenamed and have been authorized to institute the present
application vide board resolution dated 21.09.2022. I state that
what is stated in paragraphs ___ to ___ are true to my knowledge
and information and what is stated in paragraphs ___ to ___ are
based on advice which I have received from my advocates.

Solemnly declared at _____ on]
this day of September 2022.]

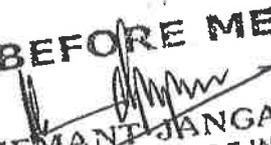

DEFONENT
Pravin N. Patil

26 SEP 2022

BEFORE ME

Identified By



NOTARY
HEMANT JANGAM
MUMBAI
MAHARASHTRA
Regn No 4702
Expiry Date
20-10-2022
GOVERNMENT OF INDIA

BEFORE ME

HEMANT JANGAM
NOTARY, GOVT. OF INDIA
MUMBAI, MAHARASHTRA.


NOTARY
HEMANT JANGAM
MUMBAI
MAHARASHTRA
Regn No 4702
GOVERNMENT OF INDIA

Advocate of Applicant

MZM Legal LLP

Advocate for Applicant

Office: 1 - D, 1st Floor,

One Forbes, Dr. V. B. Gandhi Marg,

Kalaghoda, Mumbai 400 001

Email: lawyers@mzmlegal.com

26 SEP 2022
Reg. No. 2024/2/XXV
Sr. No. 99 Pg. No 10
Date 26 SEP 2022




BENZO CHEM INDUSTRIES PVT. LTD.
MUMBAI


NOTARY
HEMANT JANGAM
MUMBAI
MAHARASHTRA
Regn No 4702
Expiry Date
20-10-2022
GOVERNMENT OF INDIA

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

Interim Application of 2022

IN

Review Application 7 of 2022(WZ)

Benzo Chem Industrial Private Limited

...Applicant

Versus

Arvind Manohar Mahajan & Ors.

...Respondent

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MZM Legal LLP

Advocate for Applicant

1 - D, 1st Floor, One Forbes

Dr. V. B. Gandhi Marg Kalaghoda,

Mumbai 400 001

Email: lawyers@mzmlegal.com



**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

Interim Application of 2022

IN

Review Application 7 of 2022(WZ)

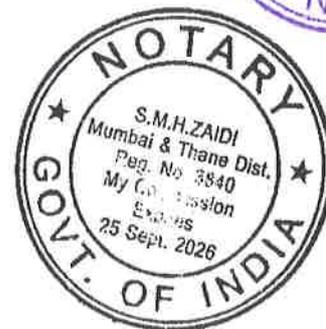
In the matter of Order dated 29 August 2022, passed by the Hon'ble National Green Tribunal, (Western Zone Bench) in Original Application 124 of 2017

And

In the matter of Section 19 of the National Green Tribunal Act, 2010 r/w Rule 22 of the National Green Tribunal (Practice and Procedure) Rules 2011

**M/s. Benzo Chem. Industries
Private Limited**

A Company incorporated under the provisions of Companies Act 1956 and validly existing under the Companies Act, 2013 having its registered office at:



R. Law



26/28-A, Cawasji Patel Street, Fort,
Mumbai 400001

Through its authorised signatory
Pravin N. Patil aged about 39 years,
Designation: Company Secretary

...Applicant

IN THE MATTER OF:

Shri. Arvind Manohar Mahajan

Age 48 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 1

Gita Arvind Mahajan

Age 42 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

...Respondent No. 2

Sopan Laxman Ekde

Age 62 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 3

Saguna Sopan Ekde

Age 63 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 4

Mangala Ravindra Mahajan



Prave

Age unknown, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 5

Ravindra Manohar Mahajan

Age 40 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 6

Umesh Purushottam Narkhade

Age 35 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 7

Nielsh Shankar Mahajan

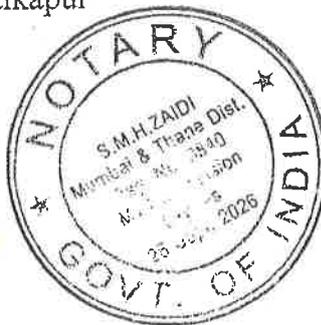
Age 30 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 8

Shobha Shankar Mahajan

Age 55 years, Occupation:
Agriculturist; Resident of
Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 9



Raw



Ramesh Laxman Choudhary

Age 50 years, Occupation:

Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 10

Nina Bajirao Tharkar

Age 57 years, Occupation:

Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 11

Kadu Bajirao Tharkar

Age 40 years, Occupation:

Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 12

Jankabai Ramesh Ekade

Age 40 years, Occupation:

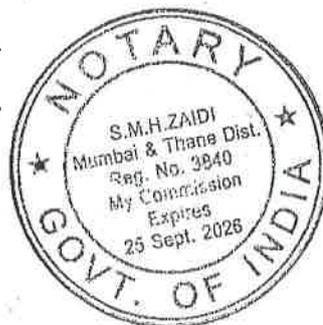
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 13

**Deputy Regional Officer,
Maharashtra State Pollution
Control Board, Regional Office,**



Shastri Nagar, Akola, Taluka &
Dist. Akola (Maharashtra).

Respondent No. 14

**Maharashtra Industrial
Development Corporation.**

Through, Executive Engineer
Dasarkhed, MIDC, Dist- Buldhana,
Malkapur 443101, Maharashtra,
India

Respondent No. 15

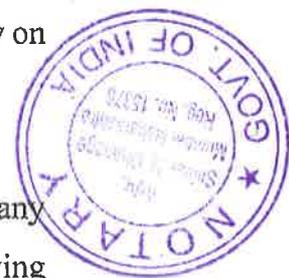
Junior Inspector of Factories,
Goranshan Road, Opp. Vaibhav
Hotel

Respondent No. 16

MOST RESPECTFULLY SHEWETH:

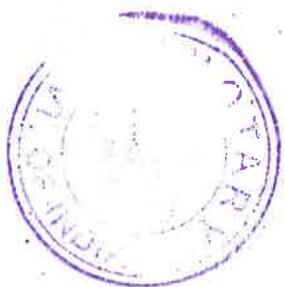
I Pravin N. Patil - Company Secretary, the authorised representative of the Applicant abovenamed having its office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001 do hereby on solemn affirmation say and submit as under:

1.1 I state that that the Applicant is a private limited Company incorporated in 1987 under the Companies Act, 1956 having its registered office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001 and is engaged in the business of manufacturing and supplying of pharmaceutical, agro intermediates, speciality chemicals, and biocides in India. It has two manufacturing units at MIDC industrial area, Dasarkhed ("said units").



Pravin

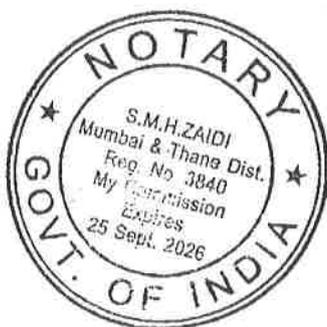
- 1.2 Respondents No. 1-13 ("**Original Applicants**") are agriculturists who possess agricultural lands in Daserkhed village.
- 1.3 Respondent No. 14 ("**Original Respondent No. 2**") is the State Pollution Control Board and is responsible for implementing various environmental legislations and monitoring the environmental degradation and ecological imbalance in the state of Maharashtra.
- 1.4 Respondent No. 15 ("**Original Respondent No. 3**") the nodal Investment Promotion agency under the Government of Maharashtra. It provides businesses with infrastructure such as land, roads, water supply, drainage facilities and street lights etc.
- 1.5 Respondent No. 16 ("**Original Respondent No. 4**") is the Junior Inspector of factories, Akola and is responsible for inspecting and ensuring that every factory has effective arrangement for safety of the workers and treatment of wastes.
- 1.6 The Original Applicants initiated proceedings on 11.07.2017 before the Hon'ble Tribunal under the provisions of the Act by filing Original Application No. 124 of 2017 (WZ) ("**Original Application**") alleging groundwater and soil pollution of their agricultural land by



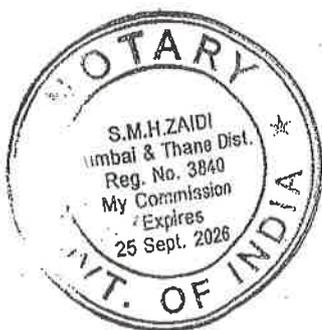
the said units of the Applicants. The Applicant was arraigned as Respondent No. 1. The Maharashtra Pollution Control Board ("MPCB"), the Maharashtra Industrial Development Corporation ("MIDC"), and the Junior Inspector of Factories were arraigned as the other Respondents.

1.7 The Original Applicants primarily raised concerns on the land and well water being affected due to discharge of hazardous effluents affecting the cultivation of crops and the land being unfit for cultivation. The Original Applicants on these primary environmental concerns prayed for the following reliefs:

- (i) Direct the closure of the Applicant prohibiting it from operating, manufacturing, and producing any chemicals in its premises at Dasarkheda, Distt Buldana,
- (ii) Direct the Applicant Company to pay suitable compensation to each of the Applicants towards the loss caused due to degradation of this lands and water as well.
- (iii) Direct the Respondent No, 2,3,4 to take immediate measures in order to prevent further degradation of land well water, if necessary, by issuing interim orders,
- (iv) Grant any other relief which this Hon'ble Tribunal may deem it fit in the facts and circumstances of the case including the costs of the present Original Application.



- 1.8 Thereafter notice was received by the Applicant on 24.07.2017. The Applicant filed its reply on 01.10.2017.
- 1.9 The Reply of Original Respondent No. 2 i.e. MPCB was filed on 24.10.2017.
- 1.10 After hearing the parties, the Hon'ble Tribunal was pleased to pass an Order dated 29.08.2022 ("**Impugned Order**") u/s.19 of the National Green Tribunal Act, 2010, (hereinafter referred to as "**the Act**"), t/w rule 22 of the National Green Tribunal (Practice and Procedure Rules 2011, (hereinafter referred to as "**the Rules**"), *inter alia*, holding the Applicant liable for environmental damages and on one hand directing the joint Committee of the CPCB and the State PCB to visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage, further directing MPCB to consider compliance of the ZLD and liability to environmental compensation on polluter pays principle for restoration of environment and furthermore directing the State PCB to close the unit of the Applicant if the violations are continuing and on the other hand for the past violations directing the Applicant to pay compensation of INR 25 crores (Indian Rupees Twenty Five Crores Only) for environmental degradation for a period prior to 5 years of filing of the Complaint up to October 2020 which was to be deposited with Original Respondent No. 2 for being



utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. The impugned Order is hereto annexed and marked as ANNEXURE 'A' to this Application. Being aggrieved by the impugned Order, the Applicant has preferred a Review Application.

2. CRUCIAL FACTS FOR THE HON'BLE TRIBUNAL'S CONSIDERATION THAT WERE NOT CONSIDERED BY THE TRIBUNAL WHILE PASSING THE IMPUGNED ORDER

- 2.1 The Applicant humbly submits that the impugned Order contains certain errors which are apparent on the face of record as the Hon'ble Tribunal has failed to into consideration the true and complete facts which were essential for a proper adjudication of the Original Application. The Applicant also states that certain new and important evidence have been discovered which could not be produced by the Applicant at the time when the impugned Order was made. Hence, the Applicant would like to bring the complete facts on record.

A. Applicant is a company established to cater to foreign standards and principles while maintaining spotless and clean record with respect to the Environment Sustainability and Protection.



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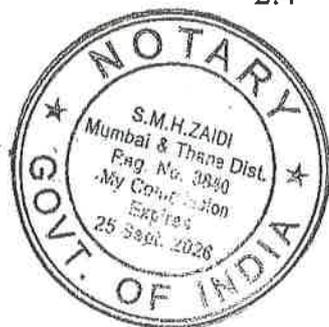


2.2 As mentioned above the Applicant is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing and supplying of pharmaceutical, agro intermediates, speciality chemicals, and biocides in India. It has established a global presence through the export of its range of products to USA, Brazil, Europe, Japan, Korea, Taiwan etc and has won numerous accolades for its products and i.e., safety measures such as the ISO 9001:2015, ISO 14001:2015 & ISO 45001: 2018. Copies of the awards and recognitions received by the Applicant are hereto annexed and marked as ANNEXURE 'B' to this Application.

B. The Applicant is a company that provides for the livelihood of many employees and also a contributor to the economy of the country.

2.3 The Applicant is a Company which is sunning its business for the past 24 years and had its first unit established since the year 1994. The Applicant since then is a provider of livelihood to numerous employees. The Applicant currently employees 800 employees and approximately 3000 families are dependent on the livelihood with the existences and functioning of the Applicant's business.

2.4 The Applicant therefore year on year is a significant contributor not only to the livelihood of 3000 families but also to the economy of the country.



C. The Applicant is located in MIDC industrial area in Dasarkhed village, Malkapur which is a heavy industrial area surrounded by other industries.

- 2.5 The Applicant has two manufacturing units in the MIDC industrial area in Dasarkhed village, Malkapur. It started the first unit in 1994 at Survey No. B26, 27, 14 and 15 in MIDC industrial area, Daserkhed, Malkapur and the second unit in 2009 at Survey No. B24 and 25. Both the said units are engaged in manufacturing various intermediate chemicals which are further used in the manufacture of pharmaceutical and agro products.
- 2.6 The Malkapur industrial area is a major industrial area developed by MIDC, which is a corporation of Ministry of Industries & Labour, Government of Maharashtra, for development & maintenance of Industrial infrastructure in state and promoting economic growth of regions within the state.
- 2.7 The industrial area has other numerous chemicals, agro-chemical and oil processing factories and has a common underground drainage system. A map of the area setting out the locations of the said units and the various industries located in the MIDC industrial area, Daserkhed is annexed hereto and marked as ANNEXURE 'C' to this Application.

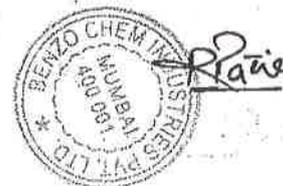
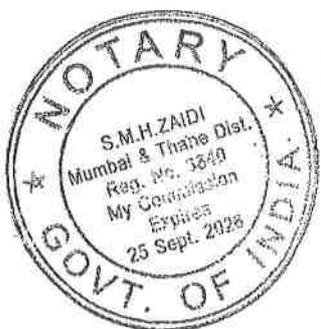


2.8 As it can be observed, there are numerous industries located near the lands of the Original Applicants and the some of these industries stand between the said units and the land of the Original Applicants. It is humbly submitted by the Applicant that the fact of the presence of other industries and the possibility of them being liable for the alleged groundwater pollution.

C. The Applicant has state of the art ETP and ZLD facility.

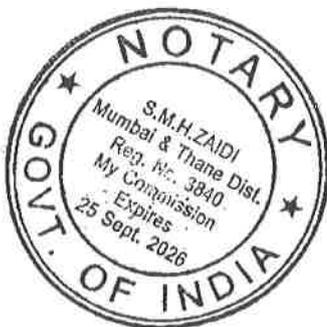
2.9 The said units were also granted Consent to Establish (CTE) on 08.08.97 by the Maharashtra Pollution Control Board ("MPCB") and are also granted Consent to Operate (CTO) periodically first on 11.09.98. The most recent CTO of the said units were granted on 05.10.21. The said units were granted Environment Clearance (EC) under EIA Notification 2006 by the Government of Maharashtra periodically and the most recent EC was provided on 10.11.2020. It is also pertinent to mention that these consents and environmental clearance were never challenged by the Original Applicants neither in the Original Application nor before any authority till date. A copy of the EC, CTO and CTE of the said units is annexed hereto and marked as ANNEXURE 'D' - Colly.

2.10 The said units have a well-functioning and state of the art Effluent Treatment Plant (ETP) having primary, secondary



and biodegradation facility and have achieved Zero Liquid Discharge (ZLD) in the said units. The said units are the only industrial unit in the MIDC industrial area, Malkapur with a well-functioning ETP facility and the only one to have achieved ZLD. Copies of the schematic diagrams of the ETP and ZLD detailing out the process of effluence treatment in the said units is annexed hereto and marked as ANNEXURE 'E' – Colly to this Application.

- 2.11 Respondents 1-13 submit that they noticed environmentally hazardous effects of the said units of the Applicants in 2010 on adjoining agricultural lands and the wells situated within its vicinity. A meeting was called with the representative of the Applicant and the Gram Panchayat. It is submitted that it was an isolated incident occurring on account of heavy rainfall in July 2010 that a small quantity of effluent got mixed overflow with the rainwater runoff. The Original Respondent No. 2 Board had also issued a letter dated 30.07.2010 to the Applicant regarding the said incident. As the said incident was brought to the knowledge of the Applicant, the Applicant took immediate steps for mediating the situation including lifting of the said discharge to the ETP and also subsequently placing tarpaulin covering over such spaces to prevent further occurrence of such an incident. Hence, subsequent to the complaints raised by the villagers, the Applicant took remedial measures to remedy the situation and the same was also noted by the MPCB.



2.12 It is pertinent to mention here that the said units of the Applicant have continued to comply with the regulatory environmental standards post the isolated incident. Regular audits by international agencies are also conducted on the safety and environmental mechanism of the said manufacturing units to ensure adherence with international standards. Regular site visits by the officials of MPCB have also confirmed that the units were operating on Zero Liquid Discharge (ZLD) mode and the Effluent Treatment Plant (ETP) was operational and in working condition. A copy of the site visit reports of the said units by MPCB over the years is hereto annexed and marked as ANNEXURE 'F' – Colly to this Application.

2.13 It is submitted that a perusal of the site reports between 2011-2020 show that the MPCB officials have made note of the state of the art and functional ETP and pollution control systems of the said units. The site visit reports and particularly the one on 06.02.2016 (i.e. just before filing of this Application) have categorically stated the following:

B. ...During visit ETP Was found in operation as well as MEE was found in operation. They are recycling the condensate water for cooling tower. The mother liquor is again recycled in MEE for treatment. The solid waste is generated from MEE i.e. the salt is disposed off by sale. They have achieved zero discharge.



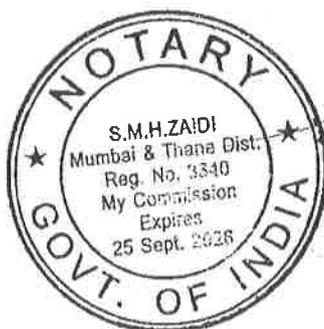
C. No any discharge of untreated/treated effluent was observed within & outside the factory premises.

Hence, it is humbly submitted that the said units were always compliant with the statutory requirements and have always been held to be compliant by the MPCB officials.

2.14 At the risk of being repetitive it is once again reiterated that the Original Respondent No.2 conducted multiple surprise visits and the reports which have already being annexed in its reply which categorically state positive things and note adequate compliances of the Said units thereby observing no discharge of effluents.

D. By the admission of the Original Applicants for the Period Prior to 2010 and the Period between 2011-December 2016 it can be safely assumed that there has been no discharge of effluents in the Land or the Well water.

2.15 The Original Applicants started raising their complaints for the first time in 2010. Pursuant thereto and as a matter of abundant precaution and a Company catering to best Indian Clients and foreign clients to avoid any reputational damage undertook necessary steps to resolve the grievances of the Original Applicants. It is submitted that at all times the Applicant was a Company determined to have the best and environment friendly mechanisms of doing its operations having the best ETP in place since inception. It is evident from the facts on record that there is and has been no



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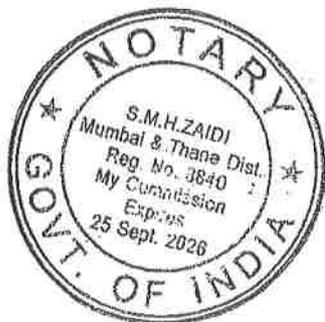
complaint from period of 2011-early 2017 by the Original Applicants. As such there was no question of any discharge of effluents in the land leading to any land degradation or well water contamination for these years.

- 2.16 Infact the above is corroborated by the reliance of the Original Applicants on the structure being put in place and by the observations of the MPCB during its visits dated 06.02.2016 and 07.02.2016, and in 2017 where it had observed things in compliances regarding the said units.

E. Sample Collection submitted by the Original Applicants to the Food Hygiene and Health Laboratory was unsupervised.

- 2.17 It was in Jan .2017, that the Original Applicants noticed chemical effluents within their land and wells. The Original Applicants collected water samples on 14.03.2017 in the absence of any representative of the government authority or Applicant. The said samples were sent to Food Hygiene and Health Laboratory, Pune ("FHHL"). Based on a report dated 18.04.2017 by FHHL, the Original Applicants filed the Original Application.

- 2.18 In the Original Application, the Original Applicants have attributed the alleged contamination of groundwater to the actions of the Applicant without adducing any evidence regarding the same. As evident from the site visit reports



just before the filing of the present application and even after filing of the present Application, the ETP of the Applicant was functioning properly and no discharge outside the factory premises was noticed by the authorities. Hence, it can be reasonably concluded that contamination of the soil and ground water could not be attributed to the Applicant as the Applicant were fully compliant with the norms laid down by the statutory authorities and had no discharge from the premises of the said units.

F. NEERI investigation and report did not take into consideration the possible discharge of effluents by other industries degrading the land and contamination of the well water.

2.19 During the hearing of the Original Application, Hon'ble Tribunal directed the Applicants to engage NEERI for assessing the soil and groundwater pollution due to percolation of wastewater. Hence, NEERI was appointed by the Applicant in compliance with the directions of MPCB and this Hon'ble Tribunal. In order to analyse the groundwater, samples were collected from open dug wells, bore wells and handpump located within 500 m and 2 kms periphery of the said units during the field visit. For the soil quality analysis, soil samples were collected within 500 m and 2 kms periphery of the said units. The collection of samples at the said units was conducted in two phrases – pre monsoon and post monsoon.



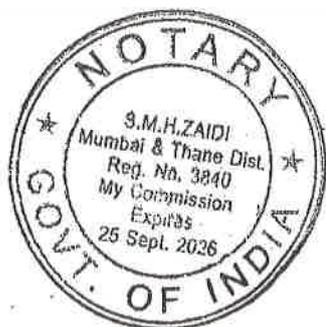
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2.20 However, it is humbly submitted by the Applicant that there are other industries within the sampling collection radius of 500 m and 2 kms. The scope of the study was quite narrow and was conducted only to assess the impact of the industrial activities of the said units on the soil and groundwater. Instead, a comprehensive study detailing the raw materials and finished products of the nearby factories, the waste treatment systems of the factories, and their proximity to the wells of the Applicants should have been carried out by NEERI to provide a true and fair report of the alleged groundwater contamination. Pertinently, the wells W1, W7 and W8 are adjacent to certain paper mills and the possibility that the wells may be contaminated by the effluents discharged from these paper mills has not been considered by the NEERI Report.

G. The NEERI report has discovered the presence of chemicals which are not used in the said units

2.21 It is also pertinent to note that in the NEERI Report, the presence of different chemicals and metals were studied in the wells.

2.22 It is humbly stated by the Applicant that the NEERI Report has discovered certain chemicals and metals like iron and manganese which are neither the raw materials nor the finished products of the said units of the Applicants. Hence, the Applicant cannot be held liable for the presence of the chemicals. The Applicant humbly submits that the presence.



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of these chemicals also speaks of the possibility that other factories excluding the said units of the Applicants may also be liable for polluting the groundwater.

H. the NEERI report has recognised the efficient ETP and ZLD facility of the applicant in its units

2.23 *The NEERI Report in Section 4.1 has aptly summarised the ETP of the Applicant as follows*

- *The ETPs of both the units 1 and 2 have sufficient capacity to take up the liquid load generated by each of the units. The plants have enough spare capacity to take up the shock loads as well.*
- *The MEE at the end of the plants, makes it possible for the industry to maintain zero liquid discharge (ZLD)*
- *The air scrubbers too have sufficient capacity to handle the loads of air pollutants generated in each unit.*

Hence, it is humbly submitted that the ETP plant of the said units was fully functional and has the capacity to treat effluents over and above the effluent currently being generated by the said units Applicant.

J. The Applicant undertook remedial actions in good faith

2.24 Despite not being responsible for the pollution, the Applicant, with bona fide intentions and keeping in mind its corporate social responsibility initiated and completed the remedial recommendations of the NEERI Report.



2.25 The Applicants spent huge sums of moneys to undertake bonafide and good faith remedial actions for restoration, treatment, welfare of the land and groundwater as well as towards compensation paid to the Original Applicants. Post completion of the remedial actions, the Applicant filed a Compliance Affidavit dated 25.05.2021 to highlight the same before this Hon'ble Tribunal. It is humbly submitted that the remedial actions were conducted by the Applicants in good faith and cannot be considered as an admission of responsibility for the pollution of the groundwater and soil. As noted by MPCB officials and in the NEERI Report, the said units have a fully functioning ETP system and have consistently achieved ZLD. Hence, the Applicants cannot be held liable for the said pollution.

K. Annual yield of Malkapur is increasing as seen from records

2.26 It is also humbly submitted by the Applicant that the annual yield of the Malkapur area has been increasing every year. The Applicant has recently come in possession of the annual yield reports of the Malkapur region. Copies of the yield reports of the Malkapur region are annexed hereto and marked as ANNEXURE 'G' – Colly to this Application. As evident from a perusal of the reports, the yield of the region has been increasing and hence no harm to the crops, as stated by the Original Applicants, have been caused.



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L. As per the admission of the Original Applicants there were no complaints or discharge of effluents between the period of 2011 to December 2016 or early 2017.

2.27 It is humbly submitted that the Original Applicants while praying for their reliefs allegedly stated in the Original Application that the Applicant started showing its environmentally hazardous effects in 2010 on adjoining agricultural lands and the wells situated within its vicinity and the lands became unfit for cultivation due to the alleged constant discharge of uncontrolled and untreated effluent into the agricultural fields.

2.28 The Original Applicant stated that due to such alleged pollution, the villagers resolved to cancel the "no objection certificate" earlier granted to the said units and requested the Collector to do so immediately. However, at a meeting held in presence of Sub-Divisional Magistrate, office bearers of Applicant and the Original Applicants, the Applicants/Original Respondent No. 1 stated that it would carry out remedial actions, if required, in the said units.

2.29 It is further submitted that the Original Applicants however, themselves at paragraph 4.18 state that the Respondent company pursuant to the directions issued by the Divisional Magistrate, made some temporary arrangements were made within its premises for discharging trade effluence of the industry and that due



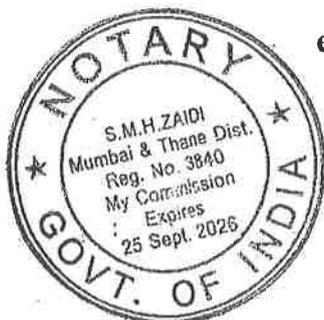
to such temporary measures by the Respondent Company, the nuisance to the land and the well water could not immediately detected.

2.30 However, the Original Applicants state that only in Jan 2017 after heavy rainfall, the villagers allegedly again found that the nearby area of the Applicants/Original Respondent No. 1 became reddish, and some chemical came out of the land.

2.31 As such there was no discharge of any effluents reported prior to 2010 and between the period of 2011 to December 2016 and/or early 2017. This has also been confirmed by the various reports of Original Respondent No.2 conducted between 2011 -2017 and are annexed and referred in this Application and the Review Application.

2.32 Further, the Original Application is barred by limitation as the first cause of action arose in the year 2010 and the Original Applicants failed to file the complaint within 6 (six) months from the date when the first cause of action arose and the Application was filed only on 2017.

M. The Applicant is not responsible for the discharge of effluents or contamination of the land and well water



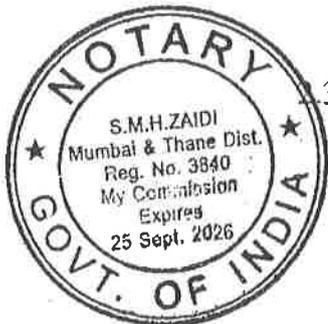
2.33 In light of the above facts which form a part of the record and the new evidence which has recently been surfaced with respect to the yielding crops the Applicant cannot be held responsible for the discharge of untreated effluents and therefore the compensation levied and directed to be paid by the Applicant in the strictest sense is unreasonable and erroneous for a Company who has since inception been committed to the treatment of effluents being discharged and the welfare of the environment and the Original Applicants.

N. Applicant is suffering reputational losses and business losses and is at the risk of being declared as a closed unit leading to its civil death

2.34 The Impugned Order has abdicated judicial functions to the Joint committee of the state authorities who shall constitute any time and declare the closure of the Applicant Company.

2.35 With every passing day of the Impugned Order in effect the Applicant who has held its reputation in the industry to be an environmentally clean and compliant company is losing business from its premiere customers and clients despite the Applicant having all its EC's CTO's and CTE's in place and also having the state of the Art ETP and ZLD facility.

2.36 With every passing day of the Impugned Order in effect the Applicant is also making reputational losses despite it being the most compliant industry in the Dasarkhed Area, MIDC



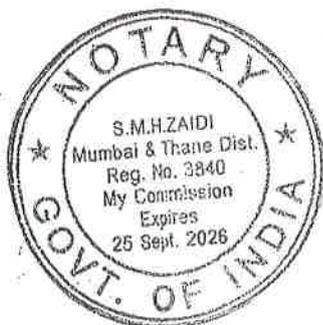
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Malkapur District having all its EC's CTO's and CTE's in place and also having the state of the Art ETP and ZLD facility.

GROUNDS

In view of the above facts and submissions the following are the grounds for the present interim application for urgent relief in the instant review application which are without prejudice to each other

- A. The Impugned Order passed by the Hon'ble Tribunal is erroneous and is passed without appreciating the prima facie facts, and submissions on record in the Original Application and the same is required to be reviewed in light of the present Application.
- B. The Impugned Order passed by this Hon'ble Tribunal is erroneous and is passed without appreciating the evidence on record and tendered by the Applicant and the same is required to be reviewed in light of the present Application.
- C. That with effect of the Impugned Order passed by this Hon'ble Tribunal the Applicant is running the risk of closure and suffering from reputational and business losses.



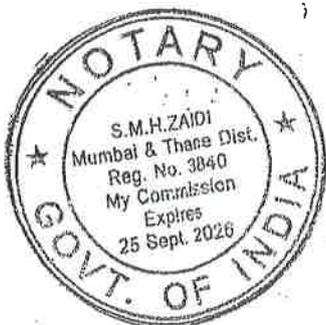
- D. The Hon'ble failed in appreciating the fact that the Applicant was always compliant from the inception of its first unit since 1994 and thereafter.
- E. The Hon'ble Tribunal erred in holding that the Applicant was patently non-compliant from 2010 till atleast 2.10.2020 where its units remained compliant.
- F. The Hon'ble Tribunal has failed to consider that from the period of 2011- 2017 there were no complaints and by the admission of the Original Applicants the structure for treatment was in place.
- G. The Hon'ble Tribunal failed to consider that multiple and regular site visit reports of MPCB post 2010 till 2017 confirm to the fact submitted by the Original Applicants that the treatment structure was in place and they categorically state that the ETP of the Applicant was operational and no discharge of effluents was observed within or outside the factory premises;
- H. The Hon'ble Tribunal failed to consider the fact that the Original Applicants have not produced any evidence to prove the discharge of effluents by the Applicant till before 2017 and has erroneously held the Applicants liable for the same.



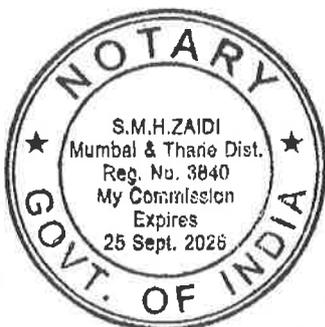
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- I. The Hon'ble Tribunal failed to take into consideration that ZLD status of the said units and has erroneously held them to be non-compliant with the CTO granted by MPCB on 26.04.2016.
- J. The Hon'ble Tribunal without appreciating all the facts and evidence on record and placed by the Applicant erred in directing the constitution of a Joint Committee.
- K. The Hon'ble Tribunal erred in bestowing the state authorities and the joint committee directed to be formed with the power to perform core adjudicatory powers of assessing the compensation and further assessing the closure of the Unit.
- L. The Hon'ble Tribunal has erred in abdicating judicial functions to the Join Committee under its Impugned Order and had further failed to appreciate that the role of committees is only to perform administrative actions to assist the Tribunal.
- M. The Hon'ble Tribunal failed to consider that the said units of the Applicant had all applicable EC, CTO and CTE in place which have not been challenged by the Original Applicants till death.



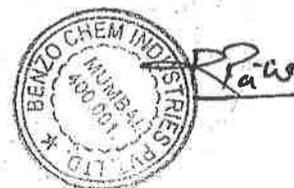
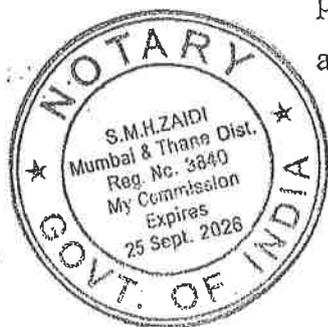
- N. The Hon'ble Tribunal has erred in directing the State PCB for closure of the unit leading to civil death of the Applicant.
- O. The Hon'ble Tribunal has failed to consider that the units of the Applicant employ 800 employees and provide livelihood to approximately 3000 families and directing and is effectively contributing to the economy of the country and thus ought not be directed to close down despite all the compliance of the Applicant placed on record.
- P. The Hon'ble Tribunal has failed to consider the presence of other factories in the Malkapur industrial area and the possibility of the other factories being responsible for the deterioration in groundwater beyond the acceptable limits.
- Q. The Hon'ble Tribunal has erroneously relied on the NEERI Report which was made with a limited scope and without taking into consideration the other industries in the area and the analysis of the growth of crops in the area which is very well established by the reports of Krishi Avog.



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- R. The Hon'ble Tribunal has failed to consider the proximity of other factories to the land of the Original Applicants and has failed to consider the possibility of liability of the same factories for the groundwater pollution.
- S. The Hon'ble Tribunal failed to take into consideration that the Original Applicants have not held other factories liable nor taken any action against other factories which are adjacent to the lands of the Applicants.
- T. The Hon'ble Tribunal failed to consider and appreciate the fact that the Applicant has already taken steps to restore the environment despite having the state-of-the-art ETP and ZLD facilities.
- U. The Hon'ble Tribunal failed to appreciate that majority of effluents/chemicals observed in the NEERI report are neither the raw materials nor the finished products of the Applicant.
- V. The Hon'ble Tribunal has erred in levying compensation of INR 25 Crores for the period of 2012-2020 on the Applicant under the strictest sense based on certain principles laid on various judgements the facts of which are entirely different from the instant case.



- W. The Hon'ble Tribunal has while determining the liability has erred in holding that the turnover of the Applicant for the past 10 years has been 200- 300 crores.
- X. The Hon'ble Tribunal has failed to consider the factors to be taken into account as set out in the Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund introduced by the Central Pollution Control Board
- Y. The Hon'ble Tribunal has failed to consider the formula determined by the formula set out in the Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund for determining the compensation in the impugned Order.
- Z. The Hon'ble Tribunal has failed to take into consideration the good faith remedial actions already undertaken by the Applicant towards the land and the decontamination of the underground well water as well as compensation paid for the well fare of the Original Applicants and the farmers.
- AA. The Hon'ble Tribunal ought to take into consideration the recently available crop data from Krishi Aycg for the years 2010 -2020 which establishes the increase in crop yield in the Malkapur District.



BB. The Hon'ble Tribunal failed to appreciate that the application filed by the Original Applicants was barred by limitation since the same was not filed within the period of six months from the date of the first cause action as per the provisions of the Act.

CC. That there is grave urgency in the matter and grave and irreparable loss and irretrievable injury shall be caused to the Applicant if the effect and implementation, effect and operation of this Impugned Order is not stayed or set aside.

3. The Applicant states that the impugned Order dated 29.08.2022 is erroneous and has failed to consider prima facie facts on record in the Original Application and certain material facts which are being brought on record by the Applicant in the Review Application and hence the impugned Order needs to be reviewed in light of the same.
4. The Applicant states that this Hon'ble Tribunal has jurisdiction to try the present Review Application and has the powers under Section 19 of the Act and Rule 22 of the National Green Tribunal (Practice and Procedure) Rules 2011 to review its own orders.

Applicant states that the Applicant have a good case on merits. The Applicants state that if the impugned Order is



not stayed and reviewed, the Review Application would become infructuous and the Applicant would be held erroneously liable for the environmental damage as well as be liable to pay compensation of INR 25 Crores (Indian Rupees Twenty-Five Crores Only) for the alleged damages caused or be at the risk of closure leading to its death.

6. Applicant states that it is expedient and in the interest of justice that this Hon'ble Tribunal ought to protect the Applicant by reviewing the impugned Order and staying the effect, operation and implementation of the impugned Order dated 29.08.2022.
7. The Applicant craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.
8. The Applicant craves leave and liberty of this Hon'ble Tribunal to produce documents forming part of the record and proceedings in the Original Application and the Review Application as and when required and to treat the Review Application as forming part of this Application as if set out specifically herein.
9. The Applicant state that no prejudice, harm or loss will be caused to the Respondents if the reliefs prayed for are granted to the Applicant. On the contrary if the same are not granted, the Applicant will suffer grave prejudice,



R. Rao

irreparable and irretrievable harm, loss and damage which cannot be compensated in terms of money.

10. The Applicant states that the impugned Order dated was received by the Applicant on 29.08.2022 and, therefore, the Review Application and the Interim Application is within limitation and is not barred by Law of Limitation.
11. The Applicant craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.
12. The Applicant craves leave and liberty of this Hon'ble Tribunal to produce documents forming part of the record and proceedings in the Original Application as and when required.
13. The Applicant states that they have not filed any Review Application or other proceedings before this Hon'ble Tribunal or any other Tribunal on the subject matter of the Review Application or this Interim Application.
14. The Applicant state that they have paid the requisite fees.
15. **APPLICANT, THEREFORE, HUMBLY PRAYS THAT:**

- a) Pending the hearing and final disposal of this Review Application, this Hon'ble Tribunal be pleased to stay the



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effect, implementation and operation of impugned Order dated 29.08.2022.

- b) That ad-interim and interim order in terms of prayer (a) above be granted.
- c) That cost of this Interim Application be provided.
- d) That such other and further reliefs as the nature and circumstances of the case may require, be granted.

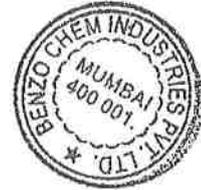
Dated this 28 day of September 2022

M. Zangarban

MZM Legal LLP
Advocate for Applicant
1 – D, 1st Floor, One Forbes
Dr. V. B. Gandhi Marg Kalaghoda,
Mumbai 400 001
Email: lawyers@mzmlegal.com

R. Law

Authorised
Representative of
Applicant



VERIFICATION

I, Pravin N. Patil, son of Nathaji Patil, aged 39 years do hereby solemnly declare and state that I am the authorised representative of the Applicant abovenamed and have been authorized to institute the present application vide board resolution dated 21.09.2022. I state that what is stated in paragraphs ___ to ___ are true to my knowledge and information and what is stated in paragraphs ___ to ___ are based on advice which I have received from my advocates.

Solemnly declared at Mumbai on
this 28 day of September 2022.

28 SEP 2022

Pravin

DEPONENT



INSTRUCTED BY

M. Zaidi

**MZM Legal LLP
Advocate for Applicant
1 - D, 1st Floor, One Forbes
Dr. V. B. Gandhi Marg Kalaghoda,
Mumbai 400 001
Email: lawyers@mzmlegal.com**

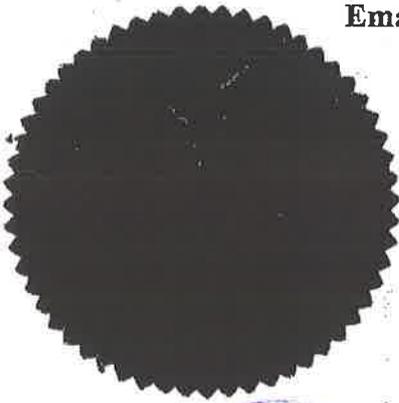
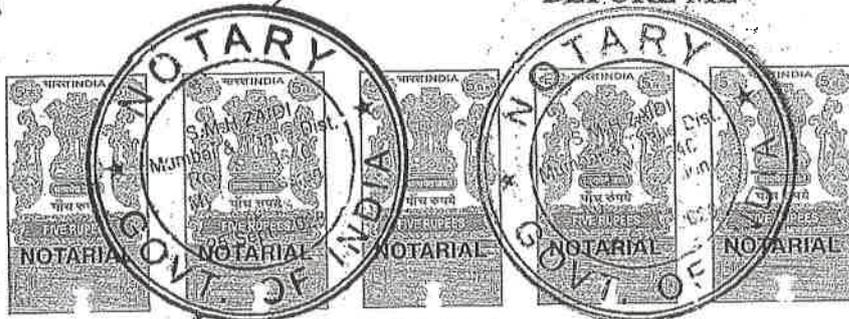


BEFORE ME

S.M.H. Zaidi
**S. M. H. ZAIDI
NOTARY
Government of India
Mumbai & Thane Dist.
28 SEP 2022**

NOTED & REGISTERED
Sr. No. 191 Page No. 19
Book No. 17 Date 28 SEP 2022

BEFORE ME



BEFORE THE NATIONAL GREEN TRIBUNAL

SPECIAL BENCH

Interim Application of 2022

IN

Review Application 7 of 2022(WZ)

Benzo Chem Industrial Private Limited

...Applicant

Versus

Arvind Manohar Mahajan & Ors.

...Respondent

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**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

Interim Application of 2022

IN

Review Application 7 of 2022 (WZ)

In the matter of Order dated 29 August 2022, passed by the Hon'ble National Green Tribunal, (Western Zone Bench) in Original Application 124 of 2017

And

In the matter of Section 19 of the National Green Tribunal Act, 2010 r/w Rule 22 of the National Green Tribunal (Practice and Procedure) Rules 2011

**M/s. Benzo Chem. Industries
Private Limited**

A Company incorporated under the provisions of Companies Act 1956 and validly existing under the Companies Act, 2013 having its registered office at:



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26/28-A, Cawasji Patel Street, Fort,
Mumbai 400001

Through its authorised signatory
Pravin N. Patil aged about 39 years,
Designation: Company Secretary

...Applicant

IN THE MATTER OF:

Shri. Arvind Manohar Mahajan

Age 48 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 1

Gita Arvind Mahajan

Age 42 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 2

Sopan Laxman Ekde

Age 62 years, Occupation:
Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 3

Saguna Sopan Ekde



Pravin

Age 63 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 4

Mangala Ravindra Mahajan
Age unknown, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 5

Ravindra Manohar Mahajan
Age 40 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 6

Umesh Purushottam Narkhade
Age 35 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 7

Nielsh Shankar Mahajan
Age 30 years, Occupation:
Agriculturist
Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 8



R. Rao

Shobha Shankar Mahajan

Age 55 years, Occupation:

Agriculturist; Resident of

Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 9

Ramesh Laxman Choudhary

Age 50 years, Occupation:

Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 10

Nina Bajirao Tharkar

Age 57 years, Occupation:

Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 11

Kadu Bajirao Tharkar

Age 40 years, Occupation:

Agriculturist

Resident of Dasarkhed, Malkapur

Dist: Buldana

Respondent No. 12

Jankabai Ramesh Ekade

Age 40 years, Occupation:

Agriculturist



R. Paw

Resident of Dasarkhed, Malkapur
Dist: Buldana

Respondent No. 13

**Deputy Regional Officer,
Maharashtra State Pollution
Control Board, Regional Office,
Shastri Nagar, Akola, Taluka &
Dist. Akola (Maharashtra).**

Respondent No. 14

**Maharashtra Industrial
Development Corporation.
Through, Executive Engineer
Dasarkhed, MIDC, Dist- Buldhana,
Malkapur 443101, Maharashtra,
India**

Respondent No. 15

**Junior Inspector of Factories,
Goranshan Road, Opp. Vaibhav
Hotel**

Respondent No. 16

MOST RESPECTFULLY SHEWETH:

I, Pravin N. Patil – Company Secretary, the authorised representative of the Applicant abovenamed having its office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001 do hereby on solemn affirmation say and submit as under:



Pravin



- 1.1 I state that that the Applicant is a private limited Company incorporated in 1987 under the Companies Act, 1956 having its registered office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001 and is engaged in the business of manufacturing and supplying of pharmaceutical, agro intermediates, speciality chemicals, and biocides in India. It has two manufacturing units at MIDC industrial area, Dasarkhed (“**said units**”).
- 1.2 Respondents No. 1-13 (“**Original Applicants**”) are agriculturists who possess agricultural lands in Daserkhed village.
- 1.3 Respondent No. 14 (“**Original Respondent No. 2**”) is the State Pollution Control Board and is responsible for implementing various environmental legislations and monitoring the environmental degradation and ecological imbalance in the state of Maharashtra.
- 1.4 Respondent No. 15 (“**Original Respondent No. 3**”) the nodal Investment Promotion agency under the Government of Maharashtra. It provides businesses with infrastructure such as land, roads, water supply, drainage facilities and street lights etc.
- 1.5 Respondent No. 16 (“**Original Respondent No. 4**”) is the Junior Inspector of factories, Akola and is responsible for inspecting and ensuring that every factory has effective



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arrangement for safety of the workers and treatment of wastes.

1.6 The Original Applicants initiated proceedings on 11.07.2017 before the Hon'ble Tribunal under the provisions of the Act by filing Original Application No. 124 of 2017 (WZ) ("**Original Application**") alleging groundwater and soil pollution of their agricultural land by the said units of the Applicants. The Applicant was arraigned as Respondent No. 1. The Maharashtra Pollution Control Board ("**MPCB**"), the Maharashtra Industrial Development Corporation ("**MIDC**"), and the Junior Inspector of Factories were arraigned as the other Respondents.

1.7 The Original Applicants primarily raised concerns on the land and well water being affected due to discharge of hazardous effluents affecting the cultivation of crops and the land being unfit for cultivation. The Original Applicants on these primary environmental concerns prayed for the following reliefs:

- (i) Direct the closure of the Applicant prohibiting it from operating, manufacturing, and producing any chemicals in its premises at Dasarkheda, Distt Buldana,
- (ii) Direct the Applicant Company to pay suitable compensation to each of the Applicants towards the



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loss caused due to degradation of this lands and water as well.

- (iii) Direct the Respondent No, 2,3,4 to take immediate measures in order to prevent further degradation of land well water, if necessary, by issuing interim orders,
- (iv) Grant any other relief which this Hon'ble Tribunal may deem it fit in the facts and circumstances of the case including the costs of the present Original Application.

1.8 Thereafter notice was received by the Applicant on 24.07.2017. The Applicant filed its reply on 01.10.2017.

1.9 The Reply of Original Respondent No. 2 i.e. MPCB was filed on 24.10.2017.

1.10 After hearing the parties, the Hon'ble Tribunal was pleased to pass an Order dated 29.08.2022 ("**Impugned Order**") u/s.19 of the National Green Tribunal Act, 2010, (hereinafter referred to as "**the Act**"), r/w rule 22 of the National Green Tribunal (Practice and Procedure Rules 2011, (hereinafter referred to as "**the Rules**"), *inter alia*, holding the Applicant liable for environmental damages and on one hand directing the joint Committee of the CPCB and the State PCB to visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage, further directing MPCB to consider compliance of the ZLD and



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liability to environmental compensation on polluter pays principle for restoration of environment and furthermore directing the State PCB to close the unit of the Applicant if the violations are continuing and on the other hand for the past violations directing the Applicant to pay compensation of INR 25 crores (Indian Rupees Twenty Five Crores Only) for environmental degradation for a period prior to 5 years of filing of the Complaint up to October 2020 which was to be deposited with Original Respondent No. 2 for being utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. The impugned Order is hereto annexed and marked as ANNEXURE 'A' to this Application. Being aggrieved by the impugned Order, the Applicant has preferred a Review Application.

2. CRUCIAL FACTS FOR THE HON'BLE TRIBUNAL'S CONSIDERATION THAT WERE NOT CONSIDERED BY THE TRIBUNAL WHILE PASSING THE IMPUGNED ORDER

2.1 The Applicant humbly submits that the impugned Order contains certain errors which are apparent on the face of record as the Hon'ble Tribunal has failed to into consideration the true and complete facts which were essential for a proper adjudication of the Original Application. The Applicant also states that certain new and



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important evidence have been discovered which could not be produced by the Applicant at the time when the impugned Order was made. Hence, the Applicant would like to bring the complete facts on record.

A. Applicant is a company established to cater to foreign standards and principles while maintaining spotless and clean record with respect to the Environment Sustainability and Protection.

- 2.2 As mentioned above the Applicant is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing and supplying of pharmaceutical, agro intermediates, speciality chemicals, and biocides in India. It has established a global presence through the export of its range of products to USA, Brazil, Europe, Japan, Korea, Taiwan etc and has won numerous accolades for its products and i.e., safety measures such as the ISO 9001:2015, ISO 14001:2015 & ISO 45001: 2018. Copies of the awards and recognitions received by the Applicant are hereto annexed and marked as ANNEXURE 'B' to this Application.

B. The Applicant is a company that provides for the livelihood of many employees and also a contributor to the economy of the country.

- 2.3 The Applicant is a Company which is sunning its business for the past 24 years and had its first unit established since



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the year 1994. The Applicant since then is a provider of livelihood to numerous employees. The Applicant currently employees 800 employees and approximately 3000 families are dependent on the livelihood with the existences and functioning of the Applicant's business.

- 2.4 The Applicant therefore year on year is a significant contributor not only to the livelihood of 3000 families but also to the economy of the country.

C. The Applicant is located in MIDC industrial area in Dasarkhed village, Malkapur which is a heavy industrial area surrounded by other industries.

- 2.5 The Applicant has two manufacturing units in the MIDC industrial area in Dasarkhed village, Malkapur. It started the first unit in 1994 at Survey No. B26, 27, 14 and 15 in MIDC industrial area, Daserkhed, Malkapur and the second unit in 2009 at Survey No. B24 and 25. Both the said units are engaged in manufacturing various intermediate chemicals which are further used in the manufacture of pharmaceutical and agro products.

- 2.6 The Malkapur industrial area is a major industrial area developed by MIDC, which is a corporation of Ministry of Industries & Labour, Government of Maharashtra, for development & maintenance of Industrial infrastructure in



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state and promoting economic growth of regions within the state.

- 2.7 The industrial area has other numerous chemicals, agro-chemical and oil processing factories and has a common underground drainage system. A map of the area setting out the locations of the said units and the various industries located in the MIDC industrial area, Daserkhed is annexed hereto and marked as ANNEXURE 'C' to this Application.
- 2.8 As it can be observed, there are numerous industries located near the lands of the Original Applicants and the some of these industries stand between the said units and the land of the Original Applicants. It is humbly submitted by the Applicant that the fact of the presence of other industries and the possibility of them being liable for the alleged groundwater pollution.

C. The Applicant has state of the art ETP and ZLD facility.

- 2.9 The said units were also granted Consent to Establish (CTE) on 08.08.97 by the Maharashtra Pollution Control Board ("MPCB") and are also granted Consent to Operate (CTO) periodically first on 11.09.98. The most recent CTO of the said units were granted on 05.10.21. The said units were granted Environment Clearance (EC) under EIA Notification 2006 by the Government of Maharashtra



R. Patil

periodically and the most recent EC was provided on 10.11.2020. It is also pertinent to mention that these consents and environmental clearance were never challenged by the Original Applicants neither in the Original Application nor before any authority till date. A copy of the EC, CTO and CTE of the said units is annexed hereto and marked as ANNEXURE 'D' - Colly.

- 2.10 The said units have a well-functioning and state of the art Effluent Treatment Plant (ETP) having primary, secondary and biodegradation facility and have achieved Zero Liquid Discharge (ZLD) in the said units. The said units are the only industrial unit in the MIDC industrial area, Malkapur with a well-functioning ETP facility and the only one to have achieved ZLD. Copies of the schematic diagrams of the ETP and ZLD detailing out the process of effluence treatment in the said units is annexed hereto and marked as ANNEXURE 'E' – Colly to this Application.

- 2.11 Respondents 1-13 submit that they noticed environmentally hazardous effects of the said units of the Applicants in 2010 on adjoining agricultural lands and the wells situated within its vicinity. A meeting was called with the representative of the Applicant and the Gram Panchayat. It is submitted that it was an isolated incident occurring on account of heavy rainfall in July 2010 that a small quantity of effluent got mixed overflow with the rainwater runoff. The Original Respondent No. 2 Board had also issued a letter dated



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30.07.2010 to the Applicant regarding the said incident. As the said incident was brought to the knowledge of the Applicant, the Applicant took immediate steps for mediating the situation including lifting of the said discharge to the ETP and also subsequently placing tarpaulin covering over such spaces to prevent further occurrence of such an incident. Hence, subsequent to the complaints raised by the villagers, the Applicant took remedial measures to remedy the situation and the same was also noted by the MPCB.

- 2.12 It is pertinent to mention here that the said units of the Applicant have continued to comply with the regulatory environmental standards post the isolated incident. Regular audits by international agencies are also conducted on the safety and environmental mechanism of the said manufacturing units to ensure adherence with international standards. Regular site visits by the officials of MPCB have also confirmed that the units were operating on Zero Liquid Discharge (ZLD) mode and the Effluent Treatment Plant (ETP) was operational and in working condition. A copy of the site visit reports of the said units by MPCB over the years is hereto annexed and marked as **ANNEXURE 'F' – Colly** to this Application.

- 2.13 It is submitted that a perusal of the site reports between 2011-2020 show that the MPCB officials have made note of the state of the art and functional ETP and pollution control



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systems of the said units. The site visit reports and particularly the one on 06.02.2016 (i.e. just before filing of this Application) have categorically stated the following:

B. ...During visit ETP Was found in operation as well as MEE was found in operation. They are recycling the condensate water for cooling tower. The mother liquor is again recycled in MEE for treatment. The solid waste is generated from MEE i.e. the salt is disposed off by sale. They have achieved zero discharge.

C. No any discharge of untreated/treated effluent was observed within & outside the factory premises.

Hence, it is humbly submitted that the said units were always compliant with the statutory requirements and have always been held to be compliant by the MPCB officials.

2.14 At the risk of being repetitive it is once again reiterated that the Original Respondent No.2 conducted multiple surprise visits and the reports which have already being annexed in its reply which categorically state positive things and note adequate compliances of the Said units thereby observing no discharge of effluents.

D. By the admission of the Original Applicants for the Period Prior to 2010 and the Period between 2011-December 2016 it can be safely assumed that there has been no discharge of effluents in the Land or the Well water.



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2.15 The Original Applicants started raising their complaints for the first time in 2010. Pursuant thereto and as a matter of abundant precaution and a Company catering to best Indian Clients and foreign clients to avoid any reputational damage undertook necessary steps to resolve the grievances of the Original Applicants. It is submitted that at all times the Applicant was a Company determined to have the best and environment friendly mechanisms of doing its operations having the best ETP in place since inception. It is evident from the facts on record that there is and has been no complaint from period of 2011-early 2017 by the Original Applicants. As such there was no question of any discharge of effluents in the land leading to any land degradation or well water contamination for these years.

2.16 Infact the above is corroborated by the reliance of the Original Applicants on the structure being put in place and by the observations of the MPCB during its visits dated 06.02.2016 and 07.02.2016, and in 2017 where it had observed things in compliances regarding the said units.

E. Sample Collection submitted by the Original Applicants to the Food Hygiene and Health Laboratory was unsupervised.

2.17 It was in Jan .2017, that the Original Applicants noticed chemical effluents within their land and wells. The Original Applicants collected water samples on 14.03.2017 in the



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absence of any representative of the government authority or Applicant. The said samples were sent to Food Hygiene and Health Laboratory, Pune ("FHHL"). Based on a report dated 18.04.2017 by FHHL, the Original Applicants filed the Original Application.

2.18 In the Original Application, the Original Applicants have attributed the alleged contamination of groundwater to the actions of the Applicant without adducing any evidence regarding the same. As evident from the site visit reports just before the filing of the present application and even after filing of the present Application, the ETP of the Applicant was functioning properly and no discharge outside the factory premises was noticed by the authorities. Hence, it can be reasonably concluded that contamination of the soil and ground water could not be attributed to the Applicant as the Applicant were fully compliant with the norms laid down by the statutory authorities and had no discharge from the premises of the said units.

F. NEERI investigation and report did not take into consideration the possible discharge of effluents by other industries degrading the land and contamination of the well water.

2.19 During the hearing of the Original Application, Hon'ble Tribunal directed the Applicants to engage NEERI for assessing the soil and groundwater pollution due to



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percolation of wastewater. Hence, NEERI was appointed by the Applicant in compliance with the directions of MPCB and this Hon'ble Tribunal. In order to analyse the groundwater, samples were collected from open dug wells, bore wells and handpump located within 500 m and 2 kms periphery of the said units during the field visit. For the soil quality analysis, soil samples were collected within 500 m and 2 kms periphery of the said units. The collection of samples at the said units was conducted in two phrases – pre monsoon and post monsoon.

2.20 However, it is humbly submitted by the Applicant that there are other industries within the sampling collection radius of 500 m and 2 kms. The scope of the study was quite narrow and was conducted only to assess the impact of the industrial activities of the said units on the soil and groundwater. Instead, a comprehensive study detailing the raw materials and finished products of the nearby factories, the waste treatment systems of the factories, and their proximity to the wells of the Applicants should have been carried out by NEERI to provide a true and fair report of the alleged groundwater contamination. Pertinently, the wells W1, W7 and W8 are adjacent to certain paper mills and the possibility that the wells may be contaminated by the effluents discharged from these paper mills has not been considered by the NEERI Report.



G. The NEERI report has discovered the presence of chemicals which are not used in the said units

- 2.21 It is also pertinent to note that in the NEERI Report, the presence of different chemicals and metals were studied in the wells.
- 2.22 It is humbly stated by the Applicant that the NEERI Report has discovered certain chemicals and metals like iron and manganese which are neither the raw materials nor the finished products of the said units of the Applicants. Hence, the Applicant cannot be held liable for the presence of the chemicals. The Applicant humbly submits that the presence of these chemicals also speaks of the possibility that other factories excluding the said units of the Applicants may also be liable for polluting the groundwater.

H. the NEERI report has recognised the efficient ETP and ZLD facility of the applicant in its units

2.23 *The NEERI Report in Section 4.1 has aptly summarised the ETP of the Applicant as follows*

- *The ETPs of both the units 1 and 2 have sufficient capacity to take up the liquid load generated by each of the units. The plants have enough spare capacity to take up the shock loads as well.*
- *The MEE at the end of the plants, makes it possible for the industry to maintain zero liquid discharge (ZLD)*
- *The air scrubbers too have sufficient capacity to handle the loads of air pollutants generated in each unit.*



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Hence, it is humbly submitted that the ETP plant of the said units was fully functional and has the capacity to treat effluents over and above the effluent currently being generated by the said units Applicant.

I. The Applicant undertook remedial actions in good faith

- 2.24 Despite not being responsible for the pollution, the Applicant, with bona fide intentions and keeping in mind its corporate social responsibility initiated and completed the remedial recommendations of the NEERI Report.
- 2.25 The Applicants spent huge sums of moneys to undertake bonafide and good faith remedial actions for restoration, treatment, welfare of the land and groundwater as well as towards compensation paid to the Original Applicants. Post completion of the remedial actions, the Applicant filed a Compliance Affidavit dated 25.05.2021 to highlight the same before this Hon'ble Tribunal. It is humbly submitted that the remedial actions were conducted by the Applicants in good faith and cannot be considered as an admission of responsibility for the pollution of the groundwater and soil. As noted by MPCB officials and in the NEERI Report, the said units have a fully functioning ETP system and have consistently achieved ZLD. Hence, the Applicants cannot be held liable for the said pollution.



J. Annual yield of Malkapur is increasing as seen from records

2.26 It is also humbly submitted by the Applicant that the annual yield of the Malkapur area has been increasing every year. The Applicant has recently come in possession of the annual yield reports of the Malkapur region. The Applicants crave leave of the court to produce such reports and current images of the yielding crops of the Original Applicant's lands. As evident from perusal of the reports, the yield of the region has been increasing and hence no harm to the crops, as stated by the Original Applicants, have been caused.

K. As per the admission of the Original Applicants there were no complaints or discharge of effluents between the period of 2011 to December 2016 or early 2017.

2.27 It is humbly submitted that the Original Applicants while praying for their reliefs allegedly stated in the Original Application that the Applicant started showing its environmentally hazardous effects in 2010 on adjoining agricultural lands and the wells situated within its vicinity and the lands became unfit for cultivation due to the alleged constant discharge of uncontrolled and untreated effluent into the agricultural fields.

2.28 The Original Applicant stated that due to such alleged pollution, the villagers resolved to cancel the "no



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objection certificate" earlier granted to the said units and requested the Collector to do so immediately. However, at a meeting held in presence of Sub-Divisional Magistrate, office bearers of Applicant and the Original Applicants, the Applicants/Original Respondent No. 1 stated that it would carry out remedial actions, if required, in the said units.

2.29 It is further submitted that the Original Applicants however, themselves at paragraph 4.18 state that the Respondent company pursuant to the directions issued by the Divisional Magistrate, made some temporary arrangements were made within its premises for discharging trade effluence of the industry and that due to such temporary measures by the Respondent Company, the nuisance to the land and the well water could not immediately detected.

2.30 However, the Original Applicants state that only in Jan 2017 after heavy rainfall, the villagers allegedly again found that the nearby area of the Applicants/Original Respondent No. 1 became reddish, and some chemical came out of the land.

2.31 As such there was no discharge of any effluents reported prior to 2010 and between the period of 2011 to December 2016 and/or early 2017. This has also been confirmed by the various reports of Original Respondent



Signature

No.2 conducted between 2011-2017 and are annexed and referred in this Application and the Review Application.

2.32 Further, the Original Application is barred by limitation as the first cause of action arose in the year 2010 and the Original Applicants failed to file the complaint within 6 (six) months from the date when the first cause of action arose and the Application was filed only on 2017.

L. The Applicant is not responsible for the discharge of effluents or contamination of the land and well water

2.33 In light of the above facts which form a part of the record and the new evidence which has recently been surfaced with respect to the yielding crops the Applicant cannot be held responsible for the discharge of untreated effluents and therefore the compensation levied and directed to be paid by the Applicant in the strictest sense is unreasonable and erroneous for a Company who has since inception been committed to the treatment of effluents being discharged and the welfare of the environment and the Original Applicants.



M. Applicant is suffering reputational losses and business losses and is at the risk of being declared as a closed unit leading to its civil death.



R. Law



- 2.34 The Impugned Order has abdicated judicial functions to the Joint committee of the state authorities who shall constitute any time and declare the closure of the Applicant Company.
- 2.35 With every passing day of the Impugned Order in effect the Applicant who has held its reputation in the industry to be an environmentally clean and compliant company is losing business from its premiere customers and clients despite the Applicant having all its EC's CTO's and CTE's in place and also having the state of the Art ETP and ZLD facility.
- 2.36 With every passing day of the Impugned Order in effect the Applicant is also making reputational losses despite it being the most compliant industry in the Dasarkhed Area, MICD Malkapur District having all its EC's CTO's and CTE's in place and also having the state of the Art ETP and ZLD facility.

GROUNDS

In view of the above facts and submissions the following are the grounds for the present interim application for urgent relief in the instant review application which are without prejudice to each other

- A. The Impugned Order passed by the Hon'ble Tribunal is erroneous and is passed without appreciating the prima facie facts, and submissions on record in the Original Application and the same is required to be reviewed in light of the present Application.

R.Paw



- B. The Impugned Order passed by this Hon'ble Tribunal is erroneous and is passed without appreciating the evidence on record and tendered by the Applicant and the same is required to be reviewed in light of the present Application.
- C. That with effect of the Impugned Order passed by this Hon'ble Tribunal the Applicant is running the risk of closure and suffering from reputational and business losses.
- D. The Hon'ble failed in appreciating the fact that the Applicant was always compliant from the inception of its first unit since 1994 and thereafter.
- E. The Hon'ble Tribunal erred in holding that the Applicant was patently non-compliant from 2010 till atleast 2.10.2020 where its units remained compliant.
- F. The Hon'ble Tribunal has failed to consider that from the period of 2011- 2017 there were no complaints and by the admission of the Original Applicants the structure for treatment was in place.
- G. The Hon'ble Tribunal failed to consider that multiple and regular site visit reports of MPCB post 2010 till 2017 confirm to the fact submitted by the Original Applicants



Raw

that the treatment structure was in place and they categorically state that the ETP of the Applicant was operational and no discharge of effluents was observed within or outside the factory premises;

- H. The Hon'ble Tribunal failed to consider the fact that the Original Applicants have not produced any evidence to prove the discharge of effluents by the Applicant till before 2017 and has erroneously held the Applicants liable for the same.
- I. The Hon'ble Tribunal failed to take into consideration that ZLD status of the said units and has erroneously held them to be non-compliant with the CTO granted by MPCB on 26.04.2016.
- J. The Hon'ble Tribunal without appreciating all the facts and evidence on record and placed by the Applicant erred in directing the constitution of a Joint Committee.
- K. The Hon'ble Tribunal erred in bestowing the state authorities and the joint committee directed to be formed with the power to perform core adjudicatory powers of assessing the compensation and further assessing the closure of the Unit.



- L. The Hon'ble Tribunal has erred in abdicating judicial functions to the Join Committee under its Impugned Order and had further failed to appreciate that the role of committees is only to perform administrative actions to assist the Tribunal.
- M. The Hon'ble Tribunal failed to consider that the said units of the Applicant had all applicable EC, CTO and CTE in place which have not been challenged by the Original Applicants till death.
- N. The Hon'ble Tribunal has erred in directing the State PCB for closure of the unit leading to civil death of the Applicant.
- O. The Hon'ble Tribunal has failed to consider that the units of the Applicant employ 800 employees and provide livelihood to approximately 3000 families and directing and is effectively contributing to the economy of the country and thus ought not be directed to close down despite all the compliance of the Applicant placed on record.
- P. The Hon'ble Tribunal has failed to consider the presence of other factories in the Malkapur industrial area and the possibility of the other factories being responsible for the



Raw

deterioration in groundwater beyond the acceptable limits.

- Q.** The Hon'ble Tribunal has erroneously relied on the NEERI Report which was made with a limited scope and without taking into consideration the other industries in the area and the analysis of the growth of crops in the area which is very well established by the reports of *Krishi Avog.*
- R.** The Hon'ble Tribunal has failed to consider the proximity of other factories to the land of the Original Applicants and has failed to consider the possibility of liability of the same factories for the groundwater pollution.
- S.** The Hon'ble Tribunal failed to take into consideration that the Original Applicants have not held other factories liable nor taken any action against other factories which are adjacent to the lands of the Applicants.
- T.** The Hon'ble Tribunal failed to consider and appreciate the fact that the Applicant has already taken steps to restore the environment despite having the state-of-the-art ETP and ZLD facilities.



R. S. W.

- U. The Hon'ble Tribunal failed to appreciate that majority of effluents/chemicals observed in the NEERI report are neither the raw materials nor the finished products of the Applicant.
- V. The Hon'ble Tribunal has erred in levying compensation of INR 25 Crores for the period of 2012-2020 on the Applicant under the strictest sense based on certain principles laid on various judgements the facts of which are entirely different from the instant case.
- W. The Hon'ble Tribunal has while determining the liability has erred in holding that the turnover of the Applicant for the past 10 years has been 200- 300 crores.
- X. The Hon'ble Tribunal has failed to consider the factors to be taken into account as set out in the Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund introduced by the Central Pollution Control Board
- Y. The Hon'ble Tribunal has failed to consider the formula determined by the formula set out in the Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund for determining the compensation in the impugned Order.



Raw

Z. The Hon'ble Tribunal has failed to take into consideration the good faith remedial actions already undertaken by the Applicant towards the land and the decontamination of the underground well water as well as compensation paid for the well fare of the Original Applicants and the farmers.

AA. The Hon'ble Tribunal ought to take into consideration the recently available crop data from Krishi Ayog for the years 2010 -2020 which establishes the increase in crop yield in the Malkapur District.

BB. The Hon'ble Tribunal failed to appreciate that the application filed by the Original Applicants was barred by limitation since the same was not filed within the period of six months from the date of the first cause action as per the provisions of the Act.

CC. That there is grave urgency in the matter and grave and irreparable loss and irretrievable injury shall be caused to the Applicant if the effect and implementation, effect and operation of this Impugned Order is not stayed or set aside.

3. The Applicant states that the impugned Order dated 29.08.2022 is erroneous and has failed to consider prima facie facts on record in the Original Application and certain



Raw

material facts which are being brought on record by the Applicant in the Review Application and hence the impugned Order needs to be reviewed in light of the same.

4. The Applicant states that this Hon'ble Tribunal has jurisdiction to try the present Review Application and has the powers under Section 19 of the Act and Rule 22 of the National Green Tribunal (Practice and Procedure) Rules 2011 to grant an oral hearing in the Review Application.
5. Applicant states that the Applicant have a good case on merits. The Applicants state that The Applicants state that for a proper adjudication of the Review Application, an opportunity of being orally heard to the Applicant is essential.
6. Applicant states that it is expedient and in the interest of justice that this Hon'ble Tribunal ought to protect the Applicant by reviewing the impugned Order and staying the effect, operation and implementation of the impugned Order dated 29.08.2022.
7. The Applicant craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.
8. The Applicant craves leave and liberty of this Hon'ble Tribunal to produce documents forming part of the record and proceedings in the Original Application and the Review



R. Paw

Application as and when required and to treat the Review Application as forming part of this Application as if set out specifically herein.

9. The Applicant state that no prejudice, harm or loss will be caused to the Respondents if the reliefs prayed for are granted to the Applicant. On the contrary if the same are not granted, the Applicant will suffer grave prejudice, irreparable and irretrievable harm, loss and damage which cannot be compensated in terms of money.
10. The Applicant states that the impugned Order dated was received by the Applicant on 29.08.2022 and, therefore, the Review Application and the Interim Application is within limitation and is not barred by Law of Limitation.
11. The Applicant craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.



12. The Applicant craves leave and liberty of this Hon'ble Tribunal to produce documents forming part of the record and proceedings in the Original Application as and when required.

13. The Applicant states that they have not filed any Review Application or other proceedings before this Hon'ble Tribunal or any other Tribunal on the subject matter of the Review Application or this Interim Application.



R.P. Patil

14. The Applicant state that they have paid the requisite fees.
15. **APPLICANT, THEREFORE, HUMBLY PRAYS THAT:**
- To provide an opportunity for oral hearing to the Applicant in open court to present all the relevant evidences and assist the Hon'ble Tribunal in adjudication of the Review Application.
 - That ad-interim and interim order in terms of prayer (a) above be granted.
 - That cost of this Interim Application be provided.
 - That such other and further reliefs as the nature and circumstances of the case may require, be granted.

Dated this 30th day of September 2022

Mangarkar

Raw
 Authorised Representative
 of Applicant



MZM Legal LLP

Advocate for Applicant

1 – D, 1st Floor, One Forbes
 Dr. V. B. Gandhi Marg Kalaghoda,
 Mumbai 400 001

Email: lawyers@mzmlegal.com



VERIFICATION

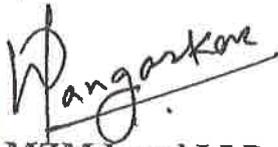
I, Pravin N. Patil son of Nathaji Patil, aged 39 years do hereby solemnly declare and state that I am the authorised representative of the Applicant abovenamed and have been authorized to institute the present application vide board resolution dated 21.09.2022. I state that what is stated in paragraphs ____ to ____ are true to my knowledge and information and what is stated in paragraphs ____ to ____ are based on advice which I have received from my advocates.

Solemnly declared at Mumbai on _____]
this 30th day of September 2022.]


DEPONENT



INSTRUCTED BY



MZM Legal LLP
Advocate for Applicant
1 - D, 1st Floor, One Forbes
Dr. V. B. Gandhi Marg Kalaghoda,
Mumbai 400 001
Email: lawyers@mzmlegal.com



BEFORE ME



Adv. Shivaji. N. Dhanage
Notary Govt Of India
Regd. No. 15376 MUMBAI (MS)
404-405, 4th Floor, Davar House,
197/199, Near Central Camera Bldg
D.N. Road, Fort, Mumbai - 400001

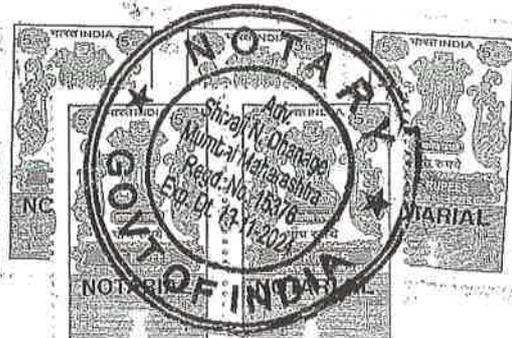
30 SEP 2022

NOTED & REGISTERED

Page No. 90 Sr. No. 826

Dated. 30 SEP 2022

BEFORE ME



Item No.2

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

REVIEW APPLICATION NO.07 OF 2022 (WZ)

IN

ORIGINAL APPLICATION NO.124 OF 2017

[Disposed of on 29.08.2022]

Benzo Chem Industrial Pvt. Ltd.

.....Applicant

Versus

Arvind Manohar Mahajan & Ors.

....Respondent(s)

Date of hearing: 30.09.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Saurabh Kulkarni along with Mr. Allan David,
Advocates instructed by MZM Legal LLP.

Respondent : —

ORDER

By this Review Application, the applicant seeks review of the order dated 29.08.2022 passed by a Special Bench comprising of five judges in Original Application No.124/2017. As per settled law, all the Judges, who had heard this matter, are still there and therefore, the Registry is directed to place this matter at the earliest before the Honourable Chairperson for passing appropriate order.

Dinesh Kumar Singh, JM



Dr. Vijay Kulkarni, EM

September 30, 2022
Review Application No.07 of 2022
npj



[I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("Oral Hearing Application") in Review Application 7 of 2022

Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>

Sat 01-Oct-22 2:37 PM

To:ngt-pune@gov.in <ngt-pune@gov.in>

Cc:Waseem Pangarkar <waseemp@mzmlegal.com>;Allan David <allan.david@mzmlegal.com>

Respected Sir,

We are concerned for our Client Benzo Chem Industries Private Limited ("Our Client"). We have filed a Review Application on behalf of our Client against the order dated 29.08.2022 in Original Application 124 of 2017. The Review Application was subsequently numbered R.A. 7 of 2022. An Interim Application 156 of 2022 for urgent interim relief was also filed in the Review Application and the Review Application along with the interim application was listed on 30.09.2022.

However, on the date of hearing, the Hon'ble Tribunal held that they did not have the powers to hear the review application and directed the Registry to list the matter before the Hon'ble Chairperson for hearing the matter.

Subsequently, we have also filed an interim application requesting an oral hearing of the review application in open court. [I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("Oral Hearing Application")

We humbly request you to please list the Oral Hearing Application along with the review application so that the same can be decided along with the review application.

For any clarification you can contact the undersigned and we shall remain obliged.

Warm Regards,

Nadiya Sarguroh
Principal Associate

1D | One Forbes | Dr. V.B. Gandhi
Marg, Kalaghoda | Mumbai: 400001
| India.

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Mumbai | New Delhi

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Re: [I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("Oral Hearing Application") in Review Application 7 of 2022

Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>

Thu 13-Oct-22 5:40 PM

To:ngt-pune@gov.in <ngt-pune@gov.in>

Cc:Waseem Pangarkar <waseemp@mzmlegal.com>;Allan David <allan.david@mzmlegal.com>

📎 1 attachments (412 KB)

R.A. 07 of 2022 - Order dated 30.09.2022.pdf;

Respected Sir,

We are concerned for our Client Benzo Chem Industries Private Limited ("Our Client"). This is in reference to Review Application 7 of 2022 filed by us on behalf of our Client against the order dated 29.08.2022 in Original Application 124 of 2017. An interim application 156 of 2022 for urgent interim relief and an interim application 158 of 2022 for oral hearing of the review application have also been filed in the Review Application.

On the first date of hearing i.e, 30.09.2022 the Bench of the Hon'ble Tribunal at Pune held that they did not have the powers to hear the review application and directed the Registry to list the matter before the Hon'ble Chairperson. A copy of the order dated 30.09.2022 is attached to this email for your reference.

Considering the urgency of the Review Application and the substantial cost imposed on our Client, we humbly request you to circulate the papers before the Hon'ble Chairperson and list the review application 07/2022 along with the interim applications 156/2022 and 158/2022 before the Chairperson as expeditiously as possible.

Warm Regards,

Nadiya Sarguroh
Principal Associate



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From: Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>

Sent: Saturday, October 1, 2022 2:37 PM

To: ngt-pune@gov.in <ngt-pune@gov.in>

Cc: Waseem Pangarkar <waseemp@mzmlegal.com>; Allan David <allan.david@mzmlegal.com>

Subject: [I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("Oral Hearing Application") in Review Application 7 of 2022

Respected Sir,

We are concerned for our Client Benzo Chem Industries Private Limited ("**Our Client**"). We have filed a Review Application on behalf of our Client against the order dated 29.08.2022 in Original Application 124 of 2017. The Review Application was subsequently numbered R.A. 7 of 2022. An Interim Application 156 of 2022 for urgent interim relief was also filed in the Review Application and the Review Application along with the interim application was listed on 30.09.2022.

However, on the date of hearing, the Hon'ble Tribunal held that they did not have the powers to hear the review application and directed the Registry to list the matter before the Hon'ble Chairperson for hearing the matter.

Subsequently, we have also filed an interim application requesting an oral hearing of the review application in open court. [I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("**Oral Hearing Application**")

We humbly request you to please list the Oral Hearing Application along with the review application so that the same can be decided along with the review application.

For any clarification you can contact the undersigned and we shall remain obliged.

Warm Regards,

Nadiya Sarguroh
Principal Associate



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NGT- URGENT LISTING of Review Application No. 07 of 2022 along with the interim applications No. 156 of 2022 and No. 158 of 2022

Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>

Wed 02-Nov-22 12:35 PM

To:judicial-ngt@gov.in <judicial-ngt@gov.in>

Cc:Waseem Pangarkar <waseemp@mzmlegal.com>;Allan David <allan.david@mzmlegal.com>

📎 1 attachments (412 KB)

Daily Order 30.09.2022.pdf,

Respected Sir,

We are concerned for our Client Benzo Chem Industries Private Limited ("**Our Client**"), the Review Applicant in the captioned proceedings. We had filed on behalf of our Client a Review Application numbered 07 of 2022(WZ) along with interim application 156 of 2022 for urgent interim relief and an interim application 158 of 2022 for oral hearing of the review application.

On the first date of hearing i.e, 30.09.2022 the Western Zone Bench of the Hon'ble Tribunal directed the Registry to list the matter before the Hon'ble Chairperson. A copy of the order dated 30.09.2022 is attached to this email for your reference. We have been informed by the Registry at Pune that the review application along with the interim applications has been sent to your good office as per the order of the bench of the National Green Tribunal.

The time limit for compliance of the order dated 29.08.2022 in Original Application 124 of 2017 by our Client is 3 (three) months out of which a significant time has already elapsed. Considering the urgency of the Review Application and the substantial cost imposed on our Client, we humbly request you to circulate the papers before the Hon'ble Chairperson and list the review application No. 07 of 2022 along with the interim applications No. 156 of 2022 and No. 158 of 2022 before the Chairperson as expeditiously as possible.

Warm Regards,

Nadiya Sarguroh
Principal Associate

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**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

Interim Application of 2022

IN

Review Application 7 of 2022(WZ)

Benzo Chem Industrial Private Limited ...Applicant

Versus

Arvind Manohar Mahajan & Ors. ...Respondent

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2.	ANNEXURE 'A' copy of the Order dated 29.08.2022 passed by the NGT in Original Application No. 124 of 2017	10-21
3.	ANNEXURE 'B' copy of the Order dated 30.09.2022 passed by the NGT, Western Zone Bench in Review Application 7 of 2022	22
4.	ANNEXURE 'C'	23-25



	Copies of the emails sent by the advocates of the Applicant requesting the Registry for urgent listing of Review Application 07 of 2022 and	
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MZM Legal LLP

Advocate for Applicant

1 – D, 1st Floor, One Forbes

Dr. V. B. Gandhi Marg Kalaghoda,

Mumbai 400 001

Email: lawyers@mzmlegal.com





**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Interim Application of 2022

IN

Review Application 7 of 2022 (WZ)

IN THE MATTER BETWEEN:

**M/s. Benzo Chem. Industries Private ...Applicant
Limited**

v.

Shri. Arvind Manohar Mahajan & Ors. ...Respondents

MOST RESPECTFULLY SHEWETH:

I Pravin N. Patil - Company Secretary, the authorised representative of the Applicant abovenamed having its office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001 do hereby on solemn affirmation say and submit as under:

1. I state that that the Applicant is a private limited Company incorporated in 1987 under the Companies Act, 1956 having its registered office at 26/28-A, Cawasji Patel Street, Fort, Mumbai 400001 and is engaged in the business of manufacturing and supplying of pharmaceutical, agro intermediates, speciality chemicals, and biocides in India. It has two manufacturing units at MIDC industrial area, Dasarkhed ("said units").



②

2. Respondents No. 1-13 ("**Original Applicants**") are agriculturists who possess agricultural lands in Daserkhed village.
3. Respondent No. 14 ("**Original Respondent No. 2**") is the State Pollution Control Board and is responsible for implementing various environmental legislations and monitoring the environmental degradation and ecological imbalance in the state of Maharashtra.
4. Respondent No. 15 ("**Original Respondent No. 3**") the nodal Investment Promotion agency under the Government of Maharashtra. It provides businesses with infrastructure such as land, roads, water supply, drainage facilities and street lights etc.
5. Respondent No. 16 ("**Original Respondent No. 4**") is the Junior Inspector of factories, Akola and is responsible for inspecting and ensuring that every factory has effective arrangement for safety of the workers and treatment of wastes.



6. The Original Applicants initiated proceedings on 11.07.2017 before the Hon'ble Tribunal under the provisions of the Act by filing Original Application No. 124 of 2017 (WZ) ("**Original Application**") alleging groundwater and soil pollution of their agricultural land by the said units of the Applicants. The Applicant was



(3)

arraigned as Respondent No. 1. The Maharashtra Pollution Control Board ("MPCB"), the Maharashtra Industrial Development Corporation ("MIDC"), and the Junior Inspector of Factories were arraigned as the other Respondents.

7. The Original Applicants primarily raised concerns on the land and well water being affected due to discharge of hazardous effluents affecting the cultivation of crops and the land being unfit for cultivation. The Original Applicants on these primary environmental concerns prayed for the following reliefs:

- (i) Direct the closure of the Applicant prohibiting it from operating, manufacturing, and producing any chemicals in its premises at Dasarkheda, Distt Buldana,
- (ii) Direct the Applicant Company to pay suitable compensation to each of the Applicants towards the loss caused due to degradation of this lands and water as well.
- (iii) Direct the Respondent No, 2,3,4 to take immediate measures in order to prevent further degradation of land well water, if necessary, by issuing interim orders,
- (iv) Grant any other relief which this Hon'ble Tribunal may deem it fit in the facts and circumstances of the case including the costs of the present Original Application.



④

8. Thereafter notice was received by the Applicant on 24.07.2017. The Applicant filed its reply on 01.10.2017.
9. The Reply of Original Respondent No. 2 i.e. MPCB was filed on 24.10.2017.
10. After hearing the parties, the Hon'ble Tribunal was pleased to pass an Order dated 29.08.2022 ("**impugned Order**") u/s.19 of the National Green Tribunal Act, 2010, (hereinafter referred to as "**the Act**"), r/w rule 22 of the National Green Tribunal (Practice and Procedure Rules 2011, (hereinafter referred to as "**the Rules**"), *inter alia*, holding the Applicant liable for environmental damages and on one hand directing the joint Committee of the CPCB and the State PCB to visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage, further directing MPCB to consider compliance of the ZLD and liability to environmental compensation on polluter pays principle for restoration of environment and furthermore directing the State PCB to close the unit of the Applicant if the violations are continuing and on the other hand for the past violations directing the Applicant to pay compensation of INR 25 crores (Indian Rupees Twenty Five Crores Only) for environmental degradation for a period prior to 5 years of filing of the Complaint up to October 2020 which was to be deposited with Original Respondent No. 2 for being



(5)

utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. The impugned Order is hereto annexed and marked as ANNEXURE 'A' to this Application.

11. Being aggrieved by the impugned Order, the Applicant had preferred a Review Application in the Western Zone Bench of the Hon'ble Tribunal. The said Review Application was numbered 07 of 2022(WZ) ("Review Application"). Interim application 156 of 2022 for urgent interim relief and Interim Application 158 of 2022 for oral hearing of the review application were also filed along with the Review Application and the matter was listed on 30.09.2022 before the western zone bench of the Hon'ble Tribunal.
12. On the first date of hearing i.e, 30.09.2022 the Western Zone Bench of the Hon'ble Tribunal held that they did not have the powers to hear the review application and directed the Registry to list the matter before the Hon'ble Chairperson ("NGT Pune Order"). A copy of the order dated 30.09.2022 in the Review Application is annexed hereto and marked as ANNEXURE 'B' to this Application.
13. Post the passing of the NGT Pune Order, the Applicant sent numerous emails to the Registry at NGT, Pune and NGT,

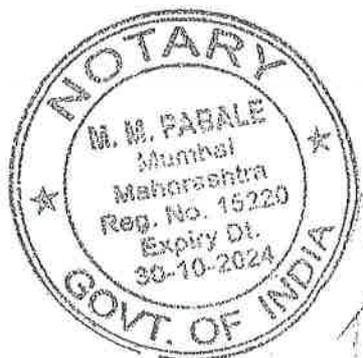


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Delhi requesting them to list the matter urgently before the Chairperson. Copies of the e-mails sent to the registry at NGT Pune and NGT Delhi is annexed hereto and marked as ANNEXURE 'C-Colly' to this Application.

14. Post the passing of the impugned Order, a period of almost 45 days have elapsed and recently, we have been informed by the Registry at NGT, Pune that the Review Application has been admitted by the Chairperson but the same has been listed in February 2023.
15. The Applicant states that the impugned Order dated 29.08.2022 is prima facie bad in law and has failed to consider prima facie facts on record in the Original Application and certain material facts which are being brought on record by the Applicant in the Review Application and hence the impugned Order needs to be reviewed in light of the same.

16. The time limit for compliance of the impugned Order dated 29.08.2022 in Original Application 124 of 2017 by the Applicant is 3 (three) months which will elapse on 29.11.2022. It is humbly submitted by the Applicant that the Review Application will be rendered infructuous and the Applicant will be erroneously held liable for the environmental damage as well as be liable to pay compensation of INR 25 Crores (Indian Rupees Twenty-Five Crores Only) for the alleged damages caused if the Review Application is not urgently listed and heard. Hence



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there is grave urgency in the matter. The Applicant humbly requests that the Review Application and the interim applications be listed for immediate hearings.

17. Applicant states that the Applicant have a good case on merits. The Applicants state that if the impugned Order is not urgently listed, stayed and reviewed, the Review Application would become infructuous and the Applicant would be held erroneously liable for the environmental damage as well as be liable to pay compensation of INR 25 Crores (Indian Rupees Twenty-Five Crores Only) for the damages caused.
18. Applicant states that it is expedient and in the interest of justice that this Hon'ble Tribunal ought to list the matter early, hear the matter and protect the Applicant by reviewing the impugned Order and stay the effect, operation and implementation of the impugned Order dated 29.08.2022 as prayed for in the Review Application and the Interim Application 156 of 2022 for urgent ad-interim reliefs.
19. The Applicant state that no prejudice, harm or loss will be caused to the Respondents if the matter is listed early and the principals of natural justice are applied to the Applicant in terms of its submissions and prayers are heard and reliefs prayed for in the Review Application and the Interim Applications are granted to the Applicant. On the contrary if the same are not granted, the Applicant will suffer grave



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prejudice, irretrievable harm, loss and damage which cannot be compensated in terms of money.

20. The Applicant states that they have not filed any Review Application or other proceedings before this Hon'ble Tribunal or any other Tribunal on the subject matter of the Review Application or this Interim Application.
21. The Applicant state that they have paid the requisite fees.

APPLICANT, THEREFORE, HUMBLY PRAYS THAT:

- a) The Review Application and the interim applications may please be urgently listed before the Principal Bench of this Hon'ble Tribunal with a request for final hearing at the earliest in open court.
- b) That such other and further reliefs as the nature and circumstances of the case may require, be granted.

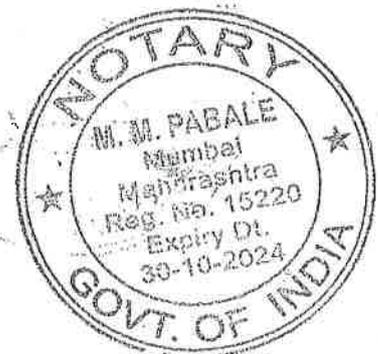
Dated this 09 day of November 2022

Ravi

Authorised
Representative of
Applicant



M. J. Pabale
MZM Legal LLP
Advocate for Applicant
1 - D, 1st Floor, One Forbes
Dr. V. B. Gandhi Marg Kalaghoda,
Mumbai 400 001
Email: lawyers@mzmlegal.com



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VERIFICATION

I, Pravin N. Patil, son of Nathaji Patil, aged 39 years do hereby solemnly declare and state that I am the authorised representative of the Applicant abovenamed and have been authorized to institute the present application vide board resolution dated 21.09.2022. I state that what is stated in paragraphs ____ to ____ are true to my knowledge and information and what is stated in paragraphs __ to ____ are based on advice which I have received from my advocates.

Solemnly declared at Mumbai on]
this 09 day of November 2022.]

Pravin



DEPONENT

INSTRUCTED BY

M. M. Pabale

MZM Legal LLP
Advocate for Applicant
1 - D, 1st Floor, One Forbes
Dr. V. B. Gandhi Marg Kalaghoda,
Mumbai 400 001
Email: lawyers@mzmlegal.com



BEFORE ME

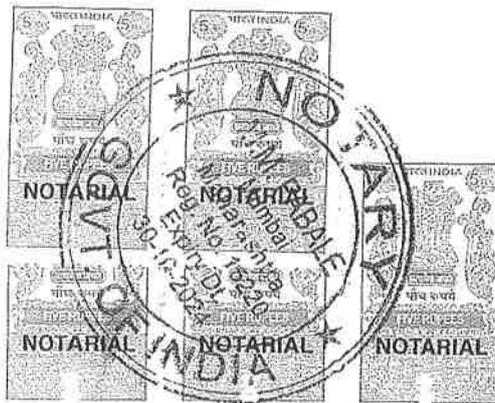
Manish M. Pabale

MANISH M. PABALE
B.Sc. LL.M.
ADVOCATE & NOTARY (GOVT. OF INDIA)
04, Natwar Chambers,
94 Nagindas Master Road,
Fort, Mumbai - 400 001.

NOTED & REGISTERED

Page No. 54/45 Sr. No. 525
Date..... 09 NOV 2022

BEFORE ME



ANNEXURE - A

Item No. 02

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 124/2017(WZ)
M.A. No.299/2017(WZ)

Arvind Mahajan & Ors.

Applicant(s)

Versus

M/s. Benzo Chem. Industries Pvt. Ltd. & Ors.

Respondent(s)

Date of hearing: 29.08.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

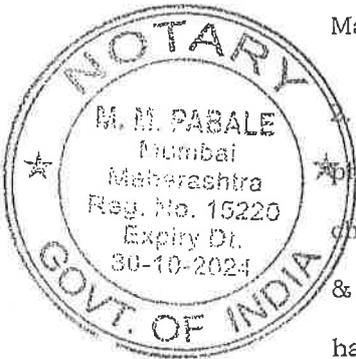
Applicant(s): Ms. Beena S. Pardesi, Advocate

Respondent(s): Mr. Sangram Singh R. Bhonsle, Ms. Samridhi S. Jain, Mr. Nrupal A. Dingankar, Ms. Pushkara A. Bhonsle, Ms. Pawarsneha Vijay, Advocates for R-1

ORDER

1. Grievance in this application is against damage to the environment by the operation of M/s. Benzo Chem Industries Pvt. Ltd., Dasarkhed, Tah Malkapur, District Buldana, Maharashtra (the Project Proponent - PP).

Case of the applicants is that the PP is engaged in manufacturing pharmaceuticals, chemical, biocides, agrochemicals, perfumery chemicals, admantane, acetophenone & benzophenone, bulk drug, anisole & phenetole and other chemicals. In the year 2010, environmentally hazardous impact was noticed on adjoining agricultural lands and wells which was due to discharge of untreated hazardous effluents in the course

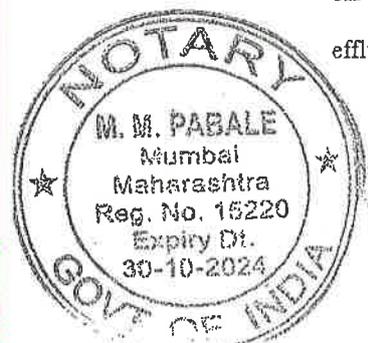


(11)

of manufacturing of pharmaceutical and agrochemical activities. The matter was taken up with the PP who undertook to take remedial action. However, the violations continued and the Panchayat vide resolution dated 30.08.2010 resolved to cancel the NOC granted to the PP. The Panchayat also asked the Collector to close down the unit. A meeting was held with the Collector on 21.02.2011 and it was decided that the compliance status should be verified by conducting inspection. Inspection was conducted and water quality was found to be not upto the laid down standards. On 13.06.2011, the State PCB assured the applicants that remedial action will be taken. Again, in January 2017, the applicants found that reddish chemicals were coming to the agricultural lands. The contamination of well water was confirmed by test report dated 18.04.2017 from Food Hygiene and Health Laboratory, Pune, NABL accredited Lab.

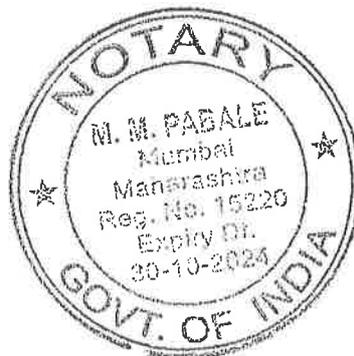
3. The application was filed on 11.07.2017 and notice was issued on 24.07.2017. Respondents include the PP and the State PCB who have filed their respective replies.

4. The stand of the State PCB in its reply dated 24.10.2017 is that the two units of the PP have been granted requisite consents. Incident of discharge of effluents with rain water runoff into the MIDC drain due to overflow of solar evaporation tanks occurred on 20.07.2010. On 23.07.2010, effluents mixed rain water was found accumulated on the road side behind the factory of the PP which was percolating into open wells in the agricultural lands, 300 meters away from the factory. The solar evaporation pond was constructed and effluents stored in the pond without permission of the State PCB. Reports appeared in the local media on 23.02.2011 about deterioration of the well water due to discharge of effluents and also infirmity of the agricultural land behind the factory of



the PP outside the MIDC area. Meeting was held by the SDM with the affected parties and the State PCB also received complaints which led to site inspection on 06.02.2016 and 07.02.2016 alongwith the farmers. Samples of water from the open wells in agricultural lands in the vicinity were taken and as per test report from Central Laboratory, MPCB, Navi Mumbai, parameters of BOD, COD and TDS were found to be beyond norms. There was contamination of cyanide in the adjoining well which had percolated from the factory of the PP. Show cause notice was issued to PP who denied responsibility for the contamination of water. The State PCB issued directions under Section 33A of the Water Act, 1974 and 31A of the Air Act, 1981 on 05.07.2016 to both the units requiring them to get damage to the crops assessed within periphery of 2 kms radius of the factory and to furnish Bank Guarantee of Rs. 2 lacs each. Thereafter on 07.09.2017, another inspection was conducted and analysis of the water samples showed contamination. Further inspection was conducted on 12.10.2017 and analysis reports were awaited. Accordingly, directions were issued to the PP on 23.10.2017 for remedial action after consulting NEERI-Nagpur.

5. The stand of the PP is that the cause of action relates to incident of 2010 and thus, the application filed in 2017 is barred by limitation. Mere fact that as per report dated 18.04.2017, discharge of hazardous effluents was found, will not provide limitation for moving the Tribunal. The PP has redressed the grievances and now has ZLD facility. 100% effluent is recycled into the cooling tower. It was pumping contaminated water from the wells and treating the same in multi-effect evaporators. It has hired service of a Facility for disposal of hazardous waste which is valid upto 10.07.2019.



(13)

6. Vide order dated 08.12.2017, the Tribunal noted the stand of the PP that compensation @ Rs. 40,000/- per acre of land was paid to the 13 applicants and thus nothing survived in the matter. The application should be dismissed as withdrawn. The Tribunal did not accept this stand and observed that the issue involved not only the individual applicants but also remediation of soil and ground water pollution.

7. The PP filed further affidavit dated 27.05.2021 to the effect that on instructions of the State PCB dated 23.12.2017 and orders of this Tribunal dated 08.12.2017 and 10.07.2018, CSIR – NEERI was engaged to study the technical adequacy of ETP and ZLD and impact of industrial activities of the soil and the groundwater. The report has been received in June 2019 after investigation of water and soil quality showing that violations were continuing. The PP has undertaken to remedy the same. The summary and recommendations of the said report quoted in the reply are as follows:

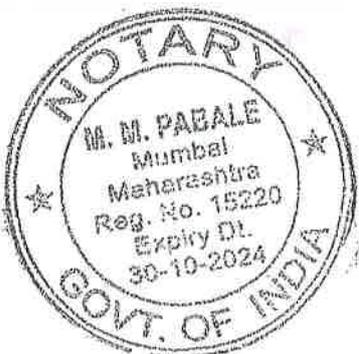
“Chapter 4 – SUMMARY AND RECOMMENDATIONS

4.1. Material Balance

- The ETPs of both the units 1 and 2 have sufficient capacity to take up the liquid load generated by each of the units. The plants have enough spare capacity to take up the shock loads as well.
- The MEE at the end of the plants, makes it possible for the industry to maintain zero liquid discharge (ZLD)
- The air scrubbers too have sufficient capacity to handle the loads of air pollutants generated in each unit.

4.2. Water Environment

- The farming as well as domestic activities are being performed with the water from dug well and bore wells. Electricity is available for a few hours in the morning and during late evening and night, hence water from these sources is used during these hours.
- The depth of these wells is between 40-100 ft and water was found upto 40 ft during summer season.
- The water samples from within 500m of the industry had pH: 6.1-7.8 and TDS, Ca, Mg and Chloride



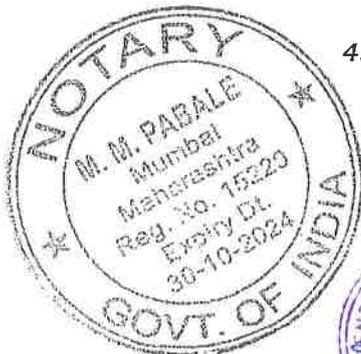
beyond permissible limits for drinking water standards in both pre and post monsoon.

- *Extremely high organic content are observed in sample, COD of W8: 4152 mg/l (pre monsoon) and 3900 mg/l (post monsoon). COD of W1, 6 and 7 in the range 274-313 mg/l. During post monsoon, W1 and W7 were observed to have COD of 248mg/l and 220 mg/l, respectively. Nitrate levels were also beyond permissible limits for Drinking water in W1, 2, 5, 6, 15,18,20 and 21 during pre monsoon and W7 in post monsoon. In general, the iron content in all the well waters is above the permissible limit of 0.3 mg/l. Manganese was found above permissible limits in samples from W 1, 6, 7 and 8 in both pre and post monsoon except W6 which was not selected for post monsoon monitoring.*
- *Based on the groundwater GC-MS/MS analysis for fine chemicals (2C, MA, OCBC, OMPAA, OCPAA and PCPAA) used as raw materials as well as finished products of the Benzochem industry are observed in low concentration in the groundwater in the wells 1, 7 and 8 within 500m radius of Benzochem Pvt. Ltd for both pre and post monsoon seasons.*
- *For post monsoon, water quality of W20, W40 and H2 samples was monitored based on the results obtained in pre monsoon since no contamination with fine chemicals was observed. These three samples were selected to represent the other samples in the 2km radius but not falling within 500m.*
- *During pre monsoon monitoring, the bore well samples within 500 m of the industry had pH in the range 7.0-8.3 and TDS: 1800-2500 mg/l. The water is hard (Hardness 700- 1360 mg/l and Chloride: 997-1059 mg/l) as well as saline. Comparatively the hand pump samples had total hardness and chloride within permissible limits in absence of alternate source.*
- *The bore well and hand pump samples had no organic content (COD: not detected)*
- *During pre monsoon monitoring, the iron content in all these samples except H2 were found beyond acceptable limits for drinking water and GC-MS/MS analysis revealed that the samples were not contaminated with fine chemicals at this depth.*



4.3. Recommendations for Water Environment

Based on the groundwater analysis for both pre and post monsoon seasons, fine chemical contaminants are observed in the groundwater specially in well no 1,7 and 8, which are adjacent to Benzochem Pvt. Ltd. Although, the concentrations of



(15)

the fine chemicals contaminants are low, however, since the water quality does not meet drinking water standards, use of well water from W1, 7 and 8 for drinking and irrigation purposes should be discontinued immediately.

Some of the immediate measures are to be pump and treat, adsorption of residual organics by activated carbon followed by regular monitoring of the well water quality post treatment. This would restore well water quality as well prevent percolation of the contamination in the groundwater. The treatment option hence would be :

Pumping of ground water and its treatment via existing ETP of Benzochem Industries Private Limited (Pumping strategies with activated carbon water treatment/ Reverse Osmosis followed by Multiple effect Evaporation). The treatment of these well water should be carried out until the water quality becomes potable and fine chemicals are not detected. These wells are to be monitored at periodic intervals throughout the treatment procedure.

Further, in terms of priority, W8 has most number of fine chemicals and has the highest priority in terms of treatment. Considering the spare capacity in ETP of the industry, W8 water can be treated there along with the MEE. W1 and W7 are also to be treated and methods listed above can be utilized for these.

Alternatively, other options available for treatment of such contaminated ground water are:

- Recharge of the wells
- In-situ groundwater treatment
- In-situ immobilization of the contaminants (sealing, stabilization, capping, cutting off, fixing, advanced oxidation process)
- Permeable reactive barrier technology for treatment of dissolved phase organic fraction

Further exploration of the feasibility of either/or options mentioned above needs to be undertaken in order to prevent further deterioration and spread of groundwater quality.

4.4. Summary and Recommendation for Soil Environment

Soil samples were examined during the pre-monsoon period from the study area for general parameters as well as for the fine chemicals. The samples were taken from 15 cm and 30 cm before the surface. However, no fine chemicals were obtained in the samples at the respective depths. Soil sample from the query pit area (E1) was found to contain fine chemical.

Treatment of contaminated pit need to be assessed as per the level and depth of fine chemicals in the soil strata. Based on this, treatment options will be considered as per following



(16)

- Soil depth analysis should be performed to assess the quantity of soil to be stabilized and check for no toxic leachates.
- Alternatively, the contaminated soil can be sent to Common Hazardous Waste Treatment and Disposal Facility (CHWTF).

Till the treatment option for contaminated soil in the query pit area is finalized, the query pit area must not be used for any purpose."

8. The PP has also mentioned the steps taken for restoration of well water, soil environment. The PP has also filed order of the State PCB dated 29.09.2020 mentioning that starred question was raised in the Maharashtra Assembly in 2020 Session about the discharge of effluents by the PP in the agricultural land and non-compliances were observed by the State PCB during visit on 17.07.2020. In view of such consistent violations, the PP was granted hearing on 25.08.2020 at 3 p.m. by the Member Secretary, State PCB wherein the PP gave assurance to take remedial action. The State PCB accordingly issued following directions:

1. Industry shall carry out the work as per the NEERI report proactively.
2. Industry shall carry out well water restoration work as per the directions of the Board within 3 months period.
3. You shall make arrangements to arrest the contaminated rainwater run-off letting outside the industry premises.
4. You shall submit the Bank Guarantee of Rs. 5.0 Lakh's towards the compliance of these Interim Directions. The Bank Guarantee shall be submitted in favour of Regional Officer, M.P.C. Board, Amravati within 15 days from the date of issue of these directions.
5. It is decided that existing Bank Guarantee of Rs. 2.0 Lakh submitted by you is to be forfeited."

9. The PP filed reply on 02.10.2020 to the effect that ETP with MEE to achieve ZLD had been installed. The PP will undertake water restoration work as per NEERI report and MPCB's directions.



10. The applicants have filed MA No. 83/2018 to the effect that non-compliance continued and water sample taken on 04.01.2018 was found to be contaminated as per report dated 08.02.2018. Presence of chemical substances was found in the water beyond prescribed limits. Some of the reports dated 08.02.2018 show as follows:

"Food Hygiene & Health Laboratory, A-512-513, Megacentre, Pune – Solapur Road, Hadapsar, Pune-411013

Sr. No.	Test Done	Result	Unit	Permissible Limit	Test Method
Table 2 General Parameters concerning substances undesirable in excessive amounts					
1	Iron (as Fe)	0.20	mg/l	1.0, Max	IS 3025 Part 53
2	Chloride (as Cl)	16394.92	mg/l	1000, Max	IS 3025 Part 32
3	Free residual Chlorine	<0.1	mg/l	Not Specified	IS 3025 Part 26
4	Fluoride (as F)	2.7	mg/l	1.5, Max	APHA 4500-F-D
5	Total hardness (as CaCO ₃)	16236.00	mg/l	600, Max	IS 3025 Part 21
6	Calcium (as Ca)	3015.62	mg/l	200, Max	IS 3025 Part 40
7	ChlDramines (as Cl ₂)	<1.0	mg/l	4.0, Max	IS 3025 Part 26
8	Magnesium (as Mg)	2117.02	mg/l	30, Max	IS 3025 Part 46
9	Copper (as Cu)	1.98	mg/l	1.5, Max	APHA 3113 B

Food Hygiene & Health Laboratory, A-512-513, Megacentre, Pune – Solapur Road, Hadapsar, Pune-411013

Sr. No.	Test Done	Result	Unit	Permissible Limit	Test Method
10	Manganese (as Mn)	79.91	mg/l	0.3, Max	APHA 3113 B
11	Sulphate (as SO ₄)	1670.04	mg/l	400, Max	IS 3025 Part 24
12	Nitrate (as NO ₃)	229.45	mg/l	45, Max	APHA 4500-NO ₃ -B
13	Phenolic compounds (as C ₆ H ₅ OH)	<0.001	mg/l	0.002, Max	IS 3025 Part 43
14	Selenium (As Se)	<0.005	mg/l	0.01, Max	IS 3025 Part 56
15	Silver (as Ag)	0.71	mg/l	0.1, Max	Annex J of IS 13428
16	Zinc (as Zn)	<0.05	mg/l	15, Max	IS 3025 Part 49
17	Anionic detergent (as MBAS)	0.050	mg/l	1.0, Max	Annex K of IS 13428
18	Mineral oil	<0.5	mg/l	0.5, Max	Clause 6 of IS 3025
19	Total Alkalinity (as CaCO ₃)	206.00	mg/l	600, Max	IS 3025 Part 23
20	Aluminum (as Al)	0.05	mg/l	0.2, Max	IS 3025 Part 55
	Ammonia (as total ammonia -N)	8.01	mg/l	0.5, Max	IS 3025 Part 34

(18)

22	Boron	0.44	mg/l	1.0, Max	IS 3025 Part 57
23	Barium(as Ba)	<0.5	mg/l	0.7, Max	Annex F of IS 13428
24	Sulphide (as H ₂ S)	<0.05	mg/l	0.05, Max	IS 3025 Part 29
25	BOD	950	mg/l	Not Specified	IS 3025 Part 44
26	COD	3744.0	mg/l	Not Specified	APHA 5220 B
27	Total Suspended Solids	240	mg/l	Not Specified	IS 3025 Part 17

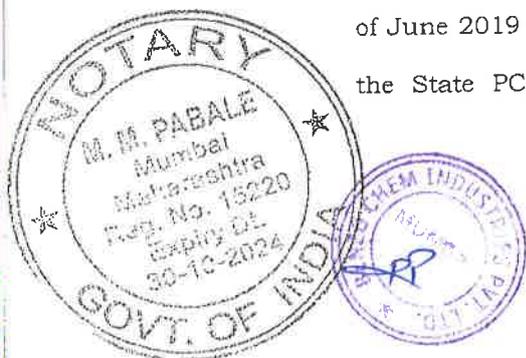
Food Hygiene & Health Laboratory, A-512-513, Megacentre, Pune
 – Solapur Road, Hadapsar, Pune-411013

Sr. No.	Test Done	Result	Unit	Permissible Limit	Test Method
01	Polychlorinated biphenyls	<0.00001	mg/l	0.0005, Max	APHA 6431-C
02	Total Arsenic(as As)	<0.005	mg/l	0.01, Max	APHA 3114C
03	Total Chromium (as	1.42	mg/l	0.05, Max	APHA 3113B
04	Mercury (as Hg)	<0.001	mg/l	0.001, Max	APHA 3112 B
05	Molybdenum (as Mo)	0.007	mg/l	0.07, Max	APHA 3113B
06	Nickel(as Ni)	0.75	mg/l	0.02, Max	APHA 3113B
07	Cadmium (as Cd)	0.25	mg/l	0.003, Max	APHA 3113B
08	Cyanide (as CN)	<0.005	mg/l	0.05, Max	IS 3025 Part 27
09	Lead (as Pb)	1.15	mg/l	0.01, Max	APHA 3113B
10	Polynuclear aromatic hydrocarbons (as PAH)	<0.0001	mg/l	0.0001, Max	APHA 6440
11	Trihalomethanes				
a)	Bromoform	<0.05	mg/l	0.1, Max	APHA 6232B
b)	Dibromochlorometha	<0.05	mg/l	0.1, Max	
c)	Bromodichlorometha	<0.05	mg/l	0.06, Max	
d)	Chloroform	<0.05	mg/l	0.2, Max	

11. We have heard learned Counsel for the parties.

12. Question for consideration is whether the unit was and is compliant and if not its accountability for past or continuing non compliances.

13. It is patent that from 2010 till atleast 2.10.2020, the unit remained non-compliant. We have already referred to first violation seen in the year 2010 and subsequent reports of 2017, February 2018 and NEERI report of June 2019 show that the violations continued. Even in August 2020, the State PCB recorded violations and the PP filed undertaking on



(19)

2.10.2020 to take further remedial action. Thus, there could be no question of matter being beyond limitation. Relief can be confined to five years before filing of the application. Though status after 2020 is not on record, the PP has to take remedial action as well as be held accountable for past violations of ten years. There are rival oral versions about current status - version of the applicants that violations are still continuing and version of the PP that violations have now been remedied.

14. Analysis reports of groundwater indicate deterioration in water quality on account of cationic and anionic imbalances. However, trace/micro pollutants could not be detected through GC/MS. Contamination of groundwater may be attributable to discharge of concentrated effluents from solar evaporation ponds. As per CTO granted by MPCB on 26.04.2016, the industry was to be operated on ZLD mode and thus has not been complied.

15. In view of above, a joint Committee of CPCB and State PCB may visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage. MPCB may consider compliance of stipulation under CTO after 2010 with reference to imposition of ZLD and liability to pay environmental compensation on polluter pays principle for restoration of environment. If the violations are still continuing, the State PCB may need to close the unit till compliance. For the past violations, for 5 years prior to filing of application and thereafter atleast till October 2020 compensation has to be levied which we quantify at Rs. 25 crores, following principles laid down inter alia in MC Mehta, (1987)1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257. As per information in public domain, operative



(20)

revenue range of the PP is Rs. 100 to 500 crores. Learned Counsel for the PP, on instructions, states that its turnover is Rs. 250 to 300 crores. CSR amount as per section 135 of the Companies Act 2013 is 2% of profit per year. Taking into account totality of circumstances, we determine liability of the PP for violations from 2012 to 2020 at Rs.25 crore which is 10% of the turnover for one year i.e. Rs. 250 crores or 1% of turnover for 10 years at that rate. This amount may be deposited with MPCB within three months for being utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. The restoration plan may take into account decontamination of groundwater with duly approved process and contaminated soil remediation by amelioration, as considered appropriate. The State PCB will be the nodal agency for coordination and compliance. If any amount is leftover after restoration of adjoining area, the same may be utilized in accordance with the District Environment Plan of District Buldana. Compliance report shall be posted on MPCB website within six months.

16. If any grievance survives or arises in future, it will be open to the aggrieved parties to take remedies in accordance with law.

The application will stand disposed of.

All pending applications will also stand disposed of.

A copy of this order be forwarded to CPCB, State PCB, District Magistrate, Buldana, Director, Agriculture Department, Maharashtra and Secretary, Ground Water Department, Maharashtra by e-mail for compliance.

Adarsh Kumar Goel, CP



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Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

August 29, 2022
Original Application No. 124/2017(WZ)
M.A.No.299/2017(WZ)
DV



ANNEXURE - B

22

Item No.2

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

REVIEW APPLICATION NO.07 OF 2022 (WZ)
IN
ORIGINAL APPLICATION NO.124 OF 2017
[Disposed of on 29.08.2022]

Benzo Chem Industrial Pvt. Ltd.

.....Applicant

Versus

Arvind Manohar Mahajan & Ors.

....Respondent(s)

Date of hearing: 30.09.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant

Mr. Saurabh Kulkarni along with Mr. Allan David,
Advocates instructed by MZM Legal LLP.

Respondent

ORDER

By this Review Application, the applicant seeks review of the order dated 29.08.2022 passed by a Special Bench comprising of five judges in Original Application No.124/2017. As per settled law, all the Judges, who had heard this matter, are still there and therefore, the Registry is directed to place this matter at the earliest before the Honourable Chairperson for passing appropriate order.



Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 30, 2022
Review Application No.07 of 2022
npj

ANNEXURE - C

23

From: Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>
 Sent: Saturday, October 1, 2022 2:37 PM
 To: ngt-pune@gov.in <ngt-pune@gov.in>
 Cc: Waseem Pangarkar <waseemp@mzmlegal.com>; Allan David <allan.david@mzmlegal.com>
 Subject: [I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("Oral Hearing Application") in Review Application 7 of 2022

Respected Sir,

We are concerned for our Client Benzo Chem Industries Private Limited ("Our Client"). We have filed a Review Application on behalf of our Client against the order dated 29.08.2022 in Original Application 124 of 2017. The Review Application was subsequently numbered R.A. 7 of 2022. An Interim Application 156 of 2022 for urgent interim relief was also filed in the Review Application and the Review Application along with the interim application was listed on 30.09.2022.

However, on the date of hearing, the Hon'ble Tribunal held that they did not have the powers to hear the review application and directed the Registry to list the matter before the Hon'ble Chairperson for hearing the matter.

Subsequently, we have also filed an interim application requesting an oral hearing of the review application in open court. [I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("Oral Hearing Application")

We humbly request you to please list the Oral Hearing Application along with the review application so that the same can be decided along with the review application.

For any clarification you can contact the undersigned and we shall remain obliged.

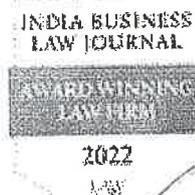
Warm Regards,

Nadiya Sarguroh
Principal Associate



MZM LEGAL LLP

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24

Allan David

From: Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>
Sent: 13 October 2022 17:40
To: ngt-pune@gov.in
Cc: Waseem Pangarkar; Allan David
Subject: Re: [I.A. Reference No.: 2704138005172022/IA/4 and I.A For Filing No.: 2704138005172022] ("Oral Hearing Application") in Review Application 7 of 2022
Attachments: R.A. 07 of 2022 - Order dated 30.09.2022.pdf

Respected Sir,

We are concerned for our Client Benzo Chem Industries Private Limited ("**Our Client**"). This is in reference to Review Application 7 of 2022 filed by us on behalf of our Client against the order dated 29.08.2022 in Original Application 124 of 2017. An interim application 156 of 2022 for urgent interim relief and an interim application 158 of 2022 for oral hearing of the review application have also been filed in the Review Application.

On the first date of hearing i.e, 30.09.2022 the Bench of the Hon'ble Tribunal at Pune held that they did not have the powers to hear the review application and directed the Registry to list the matter before the Hon'ble Chairperson. A copy of the order dated 30.09.2022 is attached to this email for your reference.

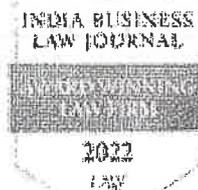
Considering the urgency of the Review Application and the substantial cost imposed on our Client, we humbly request you to circulate the papers before the Hon'ble Chairperson and list the review application 07/2022 along with the interim applications 156/2022 and 158/2022 before the Chairperson as expeditiously as possible.

Warm Regards,

Nadiya Sarguroh
Principal Associate



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25

Allan David

From: Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>
Sent: 02 November 2022 12:35
To: judicial-ngt@gov.in
Cc: Waseem Pangarkar; Allan David
Subject: NGT- URGENT LISTING of Review Application No. 07 of 2022 along with the interim applications No. 156 of 2022 and No. 158 of 2022
Attachments: Daily Order 30.09.2022.pdf

Respected Sir,

We are concerned for our Client Benzo Chem Industries Private Limited ("**Our Client**"), the Review Applicant in the captioned proceedings. We had filed on behalf of our Client a Review Application numbered 07 of 2022(WZ) along with interim application 156 of 2022 for urgent interim relief and an interim application 158 of 2022 for oral hearing of the review application.

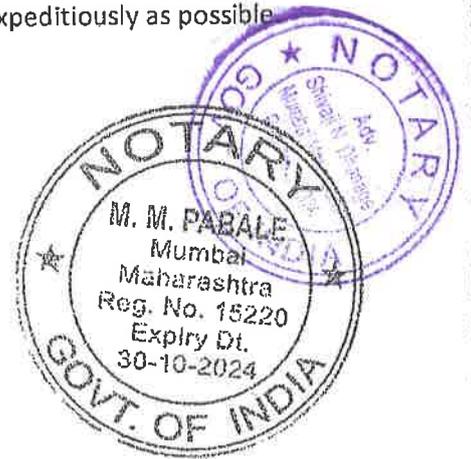
On the first date of hearing i.e, 30.09.2022 the Western Zone Bench of the Hon'ble Tribunal directed the Registry to list the matter before the Hon'ble Chairperson. A copy of the order dated 30.09.2022 is attached to this email for your reference. We have been informed by the Registry at Pune that the review application along with the interim applications has been sent to your good office as per the order of the bench of the National Green Tribunal.

The time limit for compliance of the order dated 29.08.2022 in Original Application 124 of 2017 by our Client is 3 (three) months out of which a significant time has already elapsed. Considering the urgency of the Review Application and the substantial cost imposed on our Client, we humbly request you to circulate the papers before the Hon'ble Chairperson and list the review application No. 07 of 2022 along with the interim applications No. 156 of 2022 and No. 158 of 2022 before the Chairperson as expeditiously as possible

Warm Regards,

Nadiya Sarguroh
Principal Associate

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BEFORE THE NATIONAL GREEN
TRIBUNAL SPECIAL BENCH

INTERIM APPLICATION OF 2022

IN

REVIEW APPLICATION NO.
OF 2022(WZ)

IN THE MATTER BETWEEN:

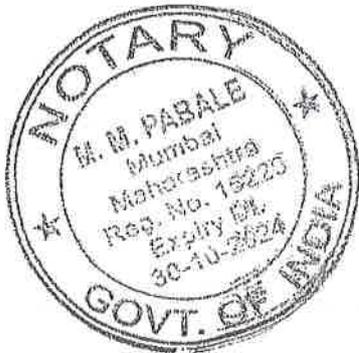
M/s. Benzo Chem. Industries Private
Limited ...Applicant

Versus

Shri. Arvind Manohar Mahajan & Ors.
...Respondents

INTERIM APPLICATION

Dated this _____ day of November 2022



MZM Legal LLP

Advocate for Applicant

Office: 1 – D, 1st Floor, One Forbes, Dr.

V. B. Gandhi Marg, Kalaghoda,

Mumbai 400 001

Email: lawyers@mzmlegal.com

URGENT LISTING MENTIONING NOTICE for listing on 17.11.2022

Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>

Wed 16-Nov-22 1:46 PM

To:judicial-ngt@gov.in <judicial-ngt@gov.in>

Cc:Waseem Pangarkar <waseemp@mzmlegal.com>;Vivek Jain <vivek.jain@mzmlegal.com>;Swapnil Srivastava <swapnil.srivastava@mzmlegal.com>;Allan David <allan.david@mzmlegal.com>

📎 1 attachments (824 KB)

Mentioning Letter - BenzoChem - IA 173 of 2022 in R.A 07 of 2022.pdf;

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

INTERIM APPLICATION NO. 173 OF 2022

In

INTERIM APPLICATION NO.156 of 2022

IN

REVIEW APPLICATION NO. 7 OF 2022 (WZ)

IN THE MATTER BETWEEN:

**M/s. Benzo Chem. Industries Private ...Applicant
Limited**

v.s

Shri. Arvind Manohar Mahajan & Ors. ...Respondents



**LETTER ON BEHALF OF APPLICANT FOR URGENT ORAL MENTIONING OF I.A.
NO. 173 OF 2022.**

Respected Sir,

1. That the Applicant has preferred the captioned Interim Application No. 173 of 2022 for urgent listing of the Review Application No. 07 of 2022 (WZ) and Interim Application No. 156 of 2022 for urgent interim reliefs.
2. That the Review Application No. 07 of 2022 has been preferred against the impugned order dated 29.08.2022 passed by the Hon'ble National Green Tribunal, Special Bench in Original Application No. 124 of 2017 whereby the Hon'ble National Green Tribunal was pleased to direct the Applicant to pay a sum of INR twenty-five (25) crores ("Impugned Order").
3. That the Applicant has been directed to complete the compliance of the aforesaid order by 29.11.2022. Thus, the Review Application and the Interim Application for interim reliefs as preferred by the Applicant challenging the said directions under the Impugned Order is urgent.
4. The Applicant most humbly prays that the papers for the Applicant's Interim Application No. 173 of 2022 for early listing and hearing of the Review



Application No. 7 of 2022 and Interim Application No. 156 of 2022 be produced before the Hon'ble Bench on 17.11.2022 for urgent oral mentioning.

5. The detailed mentioning letter with the reliefs prayed for in the Interim Application 173 of 2022 is attached herewith for your ease of reference.

AND FOR WHICH ACT OF KINDNESS THE APPLICANT SHALL REMAIN FOREVER OBLIGED.

Warm Regards,

Nadiya Sarguroh
Principal Associate



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IN THE SUPREME COURT OF INDIA

[ORDER XXI RULE 3(1)(a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

[Arising out of the impugned order dated 30.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Review Application No.7 of 2022 (WZ) in Original Application No. 124 of 2017]

WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:

Benzo Chem Industries Pvt. Ltd.

...Petitioner

VERSUS

Arvind Manohar Mahajan & Ors.

...Respondents

WITH

I.A. NO. _____ OF 2022

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED
COPY OF THE IMPUGNED ORDER

PAPER – BOOK

[FOR INDEX: KINDLY SEE INSIDE]



ADVOCATE FOR THE PETITIONER: VIVEK JAIN



REPORT OF PROCEEDINGS

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2.	Office Report on Limitation	A	A	
3.	Listing Proforma	A1 - A2	A1 - A2	
4.	Cover page of paper-book		A3	
5.	Index of Record of Proceedings		A4	
6.	Limitation Report prepared by the Registry		A5	
7.	Defect List			
8.	Note Sheet			
9.	Synopsis and List of Dates	B - R		
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	copy of the Petitioner's ISO 9001:2015 certificate for both its units in the MIDC Industrial Area.			
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26.	ANNEXURE P-15: A true copy of the order dated 21.09.2022 passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 4 of 2022.	122 – 141		
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	(without annexures) dated 26.09.2022 filed by the Petitioner before the Hon'ble NGT, Special Bench in Original Application No. 124/2017 (WZ).			
28.	ANNEXURE P-17: A true copy of the I.A. No. 156 of 2022 (without annexures) dated 26.09.2022 filed by the Petitioner seeking urgent interim reliefs before the NGT, Special Bench, in Review Application No. 7 of 2022 (WZ).	188 – 221		
29.	ANNEXURE P-18: A true copy of the I.A. No. 158 of 2022 (without annexures) filed by the Petitioner before the NGT, Special Bench in Review Application No. 7 of 2022 (WZ).	222 – 255		
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33.	ANNEXURE P-22: A true copy of the Petitioner's advocate's email dated 02.11.2022 to the Registry of Hon'ble NGT.	260		
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A

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

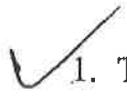
IN THE MATTER OF:

Benzo Chem Industries Pvt. Ltd. ...Petitioner

VERSUS

Arvind Manohar Mahajan & Ors. ...Respondents

OFFICE REPORT ON LIMITATION



- 1. The Petition is within time.
- 2. The Petition is barred by time and there is a delay of ____ days in filing the same against the order dated 30.09.2022 and the petition for condonation of ____ days delay has been filed.
- 3. There is delay of ____ days in re-filing the petition and petition for condonation of ____ days in re-filing has been filed.

Date: 22.11.2022

(Section Officer)



M

PROFORMA FOR FIRST LISTING
SECTION: IX (Maharashtra)

The case pertains to (Please tick/check the correct box):

- Central Act: (Title) **Constitution of India.**
- Section: **Article 136**

- Central Rule: (Title) **N.A.**
- Rule No(s): **N.A.**

- State Act: (Title) **N/A**
- Section: **N.A.**

- State Rule: (Title) **N.A.**
- Rule No(s): **N.A.**

- Impugned Interim Order: (Date) **N/A**
- Impugned Final Order/Decree: (Date) **30.09.2022**

- High Court: (Name) **N/A**
- Names of Judges: **Hon'ble Mr. Dinesh Kumar, JM
Hon'ble Dr. Vijay Kulkarni, EM**

- Tribunal/Authority: (Name) **National Green Tribunal,
Western Zone Bench, Pune**

-
- 1. Nature of matter: Civil Criminal
 - 2. (a) Petitioner/Appellant No.1: **Benzo Chem Industries Pvt. Ltd.**
 - (b) e-mail ID: **N/A**
 - (c) Mobile phone number: **N/A**
 - 3. (a) Respondent No.1: **Arvind Manohar Mahajan & Ors.**
 - (b) e-mail ID: **N/A**
 - (c) Mobile phone number: **N/A**

 - 4. (a) Main Category classification: **18 Ordinary Civil Matters**
 - (b) Sub-classification: **1808 Others**

 - 5. Not to be listed before: **N/A**

 - 6. (a) Similar disposed of matter with citation, if any, & case details: **No similar disposed of matter**



A2

(b) Similar pending matter with case details: **SPL (C) No. 17931 of 2022**

7. **Criminal Matters:**

- (a) Whether accused/convict has surrendered: Yes No
 (b) FIR No. **N.A.**
 (c) Police Station: **N.A.**
 (d) Sentence Awarded: **N.A.**

(e) Period of sentence undergone including period of Detention/Custody Undergone: **N.A.**

8. **Land Acquisition Matters:**

- (a) Date of Section 4 notification: **N/A**
 (b) Date of Section 6 notification: **N/A**
 (c) Date of Section 17 notification: **N/A**

9. **Tax Matters:** State the tax effect: **N/A**

10. **Special Category (first petitioner/appellant only):** **N/A**

Senior citizen > 65 years SC/ST Woman/child
 Disabled Legal Aid case In custody

11. **Vehicle Number (in case of Motor Accident Claim matters):**
N/A

Date: 22.11.2022

AOR for petitioner(s)/appellant(s)



VIVEK JAIN
 AOR Code No. 2180
 606, Adishwar Apartments,
 34, Firozshah Road, New Delhi
 Ph No:- 09990252039
 Email: vivekjain.legal@gmail.com



B

SYNOPSIS

1. That the present Special Leave. Petition has been filed by the Petitioner aggrieved by the order dated 30.09.2022 passed by the Hon'ble National Green Tribunal Western Bench at Pune whereby the Review Application No. 7 of 2022 preferred by the Petitioner has been transferred by the Hon'ble Western Bench at Pune to the Hon'ble Principal Bench at New Delhi on the first date of hearing of the Petitioner's Review Application.

2. That the said Review Application has been preferred by the Petitioner against the order dated 29.08.2022 passed by the Hon'ble Western Bench at Pune in Original Application No. 124 of 2017 whereby the Hon'ble NGT was pleased to impose a penalty of INR Twenty-Five Crores on the Petitioner on the ground that it was non-compliant with requisite environment standards. That the Petitioner has been provided with time until 29.11.2022 to pay such fine and therefore, there is urgency.

3. That pertinently, the said observation is misplaced on account of placing erroneous reliance on certain reports. That the Hon'ble NGT failed to take into consideration that the Petitioner had always been compliant, as can be seen from the Surprise Site Inspection Reports prepared by the Respondent No. 14 State Pollution Control Board.

4. That this Hon'ble Court has passed an order dated 18.10.2022 in SLP (C) No. 17931 of 2022, clarifying that the Western Bench matters have to be heard by the Western Bench. However, in spite of this, the Hon'ble Western Bench transferred the Petitioner's



C

review application. Pertinently, the said review application will become infructuous on 29.11.2022. But neither is the Hon'ble Western Bench hearing the matter nor the Hon'ble Principal Bench.

5. That the Petitioner has written multiple emails dated 01.10.2022, 13.10.2022, 02.11.2022 and 16.11.2022 to the Registry of the Hon'ble NGT, Western Bench as well as the Principal Bench. In fact, the Petitioner was constrained to prefer an I.A. before the Hon'ble NGT seeking an early hearing of its Review Application. However, even this IA did not come up for hearing!
6. Therefore, the Petitioner was constrained to orally mention the matter before the Hon'ble NGT, Principal Bench seeking an urgent listing. However, in spite of making out the urgency in the matter, the Hon'ble Principal Bench was not inclined to grant a hearing to the Petitioner.
7. Thus, the Petitioner has been made to run from pillar to post without any of the benches of the Hon'ble NGT hearing its case. Pertinently, the Petitioner has a good case of review, and in view of the same. Thus, currently the Petitioner would be burdened with INR Twenty-Five Crores penalty by 29.11.2022 without the recourse of review.
8. Therefore, the Petitioner has come before this Hon'ble Court seeking its indulgence to protect its rights.



237

D

LIST OF DATES

DATE

PARTICULARS

1987

The Petitioner is incorporated as a private limited company under the provisions of the Companies Act, 1956. The Petitioner is engaged in the business of manufacturing and supplying of pharmaceutical, agro-intermediates, specialty chemicals, and biocides in India. It has established a global presence through the export of its range of products to USA, Brazil, Europe, Japan, Korea, Taiwan etc and its facilities are ISO 9001:2015, ISO 14001:2015 & ISO 45001:2018 certified.

That the Petitioner has two manufacturing units in the MIDC Industrial Area, Dasarkhed Village, Malkapur, Buldana, Maharashtra situated at Survey No. B-26 and 27, and at Survey No. B-24 and 25 [**“the concerned units”**]. The concerned units of the Petitioner directly employ approximately 800 people from the local area, and indirectly provides livelihood to more than 3000 other people. The MIDC Industrial Area is heavily industrialized and there are several other chemicals, agro-chemical and oil processing factories in the area. **They all share a common underground drainage system.**

A true copy of the Petitioner's ISO 9001:2015 certificate is annexed hereto and marked as **ANNEXURE P-1 (At page 20 to 21).**



E

A true copy of the Petitioner's ISO 14001:2015 certificate is annexed hereto and marked as ANNEXURE P-2 (At page 22 to 23).

A true copy of the Petitioner's ISO 45001:2018 certificate is annexed hereto and marked as ANNEXURE P-3 (At page 24 to 25).

15.11.2011 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

A true and typed copy of the Respondent No. 14's Site Visit Report dated 15.11.2011 is annexed hereto and marked as ANNEXURE P-4 (At page 26).

28.02.2012 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

A true and typed copy of the Respondent No. 14's Site Visit Report dated 28.02.2012 is annexed hereto and marked as ANNEXURE P-5 (At page 27 to 28).

20.02.2013 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both



F

the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

A true and typed copy of the Respondent No. 14's Site Visit Report dated 20.02.2013 is annexed hereto and marked as ANNEXURE P-6 (At page 29 to 30).

29.10.2014 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

A true and typed copy of the Respondent No. 14's Site Visit Report dated 29.10.2014 is annexed hereto and marked as ANNEXURE P-7 (At page 31 to 32).

20.05.2015 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

A true and typed copy of the Respondent No. 14's Site Visit Report dated 20.05.2015 is annexed hereto and marked as ANNEXURE P-8 (At page 33 to 34).



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2017 That the local villagers/unknown persons in the area where the concerned units are situated at, collected random samples. The said samples were collected without the supervision of any statutory/civic body and/or representatives of the Petitioner. Further, there is no information available as to how the said samples were collected and subsequently handled.

17.03.2017 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

A true and typed copy of the Respondent No. 14's Site Visit Report dated 17.03.2017 is annexed hereto and marked as ANNEXURE P-9 (At page 35 to 36).



18.04.2017 The Food Hygiene and Health Laboratory, Pune ["FHHL, Pune"] published a report based on the random sample collected by the villagers/unknown persons in the area where the concerned units were located.

2017 That the original applicants before the Hon'ble NGT preferred Original Application No. 124 of 2017 (WZ) whereunder they alleged damages to the soil and well water due to the discharge of



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hazardous effluents from the concerned units of the Petitioner.

- 21.07.2017 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.
A true and typed copy of the Respondent No. 14's Site Visit Report dated 21.07.2017 is annexed hereto and marked as **ANNEXURE P-10** (At page 37 to 38).
- 24.07.2017 The Petitioner was served with a notice in the aforementioned Original Application No. 124 of 2017 (WZ).
- 01.10.2017 The Petitioner filed its reply in Original Application No. 124 of 2017 (WZ).
- 24.10.2017 The Respondent No. 14 to the present petition filed its reply to the Original Application No. 124 of 2017 (WZ) wherein it stated that the Petitioner was in complete compliance of all environment safety requirements and had a fully functional ETP and was operating at Zero Liquid Discharge ["ZLD"]. The Respondent No. 14 further stated in its reply to the Original Application that the Petitioner herein, in view of its complete compliance, had



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been granted the requisite statutory clearances and consents to operate its concerned units.

That in spite of being in full compliance, the Petitioner, without prejudice to its rights and in complete good faith, made payments to the Respondent Nos. 1 to 13 at the rate of INR 40,000/- per acre of land.

08.12.2017 In view of the compensation given to the Respondents Nos. 1 to 13, their counsel appeared before the Hon'ble NGT and sought permission to withdraw the Original Application. But the same was not granted by the Hon'ble NGT.

08.12.2017 The Hon'ble NGT passed an order in the Original Application, directing the Petitioner to engage the National Environment Engineering Research Institute, Nagpur ["NEERI"] for assessing the soil and groundwater pollution due to percolation of waste water. The Hon'ble NGT further directed that the report be presented in three months' time from the date of the order.

The Petitioner promptly engaged NEERI as per the directions of the Hon'ble NGT.

A true copy of the order dated 08.12.2017 passed by the Hon'ble NGT, Western Zone Behc, Pune in Application No. 124/2017 (WZ) is annexed hereto



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and marked as ANNEXURE P-11 (At page 39 to 40).

30.10.2018 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

A true and typed copy of the Respondent No.14's Site Visit Report dated 30.10.2018 is annexed hereto and marked as ANNEXURE P-12 (At page 41).

June, 2019 NEERI submitted its final report to the Petitioner. However, the report was linear in its approach and did not take into consideration the pollutants being generated by the other industries in the area. Further, the report found iron and manganese in the samples collected which are neither a raw material nor a byproduct of the Petitioner's production process. Pertinently, such pollutants are caused by paper mills, and the concerned area from where the samples were collected have a few paper mills in the vicinity.

Additionally, NEERI also noted that the Petitioner had fully operational ETP facilities at its two units and had achieved zero liquid discharge status and had maintained the same.



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That in spite of the pollutants found in the report not being attributable to the Petitioner, the Petitioner undertook additional remedial measures to mitigate the same.

A true copy of the NEERI Report dated June, 2019 is annexed hereto and marked as ANNEXURE P-13 (At page 42 to 109).

25.05.2021 The Petitioner submitted a compliance affidavit before the Hon'ble NGT in the Original Application wherein it listed out the entirety of the remedial actions taken by it pursuant to the NEERI Report, and in full compliance of the orders of the Hon'ble NGT.

25.08.2021 The Respondent No. 14 conducted a surprise visit and check at the Petitioner's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.



29.08.2022 That the Hon'ble NGT passed an order disposing off the Original Application No. 124 of 2017. In the said order, the Hon'ble NGT held the Petitioner non-compliant and imposed a penalty of INR Twenty-Five Crores on the Petitioner. It further directed a joint Committee of CPCB and State PCB to visit the site and ascertain compliance status in terms of ground water



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contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damages and decide whether the Petitioner's facilities should be permitted to operate.

Pertinently, this order of the Hon'ble NGT suffers from errors patent on the face of the record.

A true copy of the order dated 29.08.2022 passed by the Hon'ble NGT, Special Bench in Original Application No. 124 of 2017 (WZ) is annexed hereto and marked as **ANNEXURE P-14** (At page 110 to 121).

21.09.2022 The Hon'ble High Court of Bombay at Goa passed a final order and judgment in PIL Writ Petition No. 4 of 2022 (*Goa Foundation v. National Green Tribunal, Principal Bench & Ors.*) and at Paragraph 56 of the said judgement, the Hon'ble High Court of Bombay at Goa was pleased to direct that,

"56. ...The constitution of the Special bench seated at New Delhi is illegal. Only the members of the Western Zonal Bench can hear matters pertaining to the Western Zonal Bench, including matters arising from Goa and Maharashtra."

A true copy of the order dated 21.09.2022 passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 4 of 2022 is annexed hereto



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and marked as ANNEXURE P-15 (At page 122 to 141).

26.09.2022 Aggrieved by the aforementioned order dated 29.08.2022 passed by the Hon'ble NGT, the Petitioner preferred a Review Application before the Hon'ble NGT Western Bench, Pune under Section 19 of the National Green Tribunal Act r/w Rule 22 of the National Green Tribunal (Practice and Procedure) Rules, 2011 seeking a review of the said order.

The Petitioner also filed interim application 156 of 2022 for urgent interim reliefs and interim application 158 of 2022 for oral hearing in the review application.

A true copy of the Review Application No. 7 of 2022 (without annexures) dated 26.09.2022 filed by the Petitioner before the Hon'ble NGT, Special Bench in Original Application No. 124/2017 (WZ) is annexed hereto and marked as ANNEXURE P-16 (At page 142 to 187).

A true copy of the I.A. No. 156 of 2022 (without annexures) dated 26.09.2022 filed by the Petitioner seeking urgent interim reliefs before the NGT, Special Bench, in Review Application No. 7 of 2022 (WZ) is annexed hereto and marked as ANNEXURE P-17 (At page 188 to 221).

A true copy of the I.A. No. 158 of 2022 (without annexures) filed by the Petitioner before the NGT,



IV

Special Bench in Review Application No. 7 of 2022 (WZ) is annexed hereto and marked as **ANNEXURE P-18** (At page 222 to 255).

30.09.2022 That the aforementioned Review Application No. 7 of 2022 came up for hearing before the Hon'ble NGT, Western Bench, Pune. However, the Hon'ble Bench refused to hear the matter on the ground that the judges who reviewed the matter are now sitting in the Hon'ble NGT, New Delhi, and that for reason, the Review Application should be heard by them. The Hon'ble NGT, therefore, directed the registry to place the matter before the Hon'ble Chairperson at the earliest.

01.10.2022 The Petitioner's advocate preferred an email to the Registry of the Hon'ble NGT Western Bench, Pune seeking urgent listing of the Petitioner's Review Application as per the impugned order dated 30.09.2022. In this email, it was highlighted that that the Petitioner was seeking urgent interim reliefs and an oral hearing before the Hon'ble Bench.

A true copy of the Petitioner's advocate's email dated 01.10.2022 is annexed hereto and marked as **ANNEXURE P-19** (At page 256).

13.10.2022 The Petitioner's Review Application did not come up for hearing and the Petitioner's advocate was



constrained to address another email to the Registry of the Hon'ble NGT Western Bench, Pune seeking urgent listing of the application. The Petitioner's Advocates also made telephonic calls to the Hon'ble Registry, and were informed that the matter has been redirected to the Registry of the Hon'ble NGT, New Delhi.

A true copy of the Petitioner's advocate's email dated 13.10.2022 is annexed hereto and marked as **ANNEXURE P-20** (At page 257).

18.10.2022

This Hon'ble Court passed an order in SLP (C) No. 17931 of 2022, whereby it was pleased to stay the operation of the judgment dated 21.09.2022 passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 4 of 2022 in the following terms,

"By way of ad-interim order, we stay the directions mentioned in paragraph 56 of the impugned order.

However, we clarify that since two Members (One Judicial and one Expert Member) are very much available for Western Zone Bench, all matters pertaining to Western Zone, Pune, including the matters arising out the States of Maharashtra and Goa will be heard only by Pune Bench sitting at Pune."

A true copy of the order dated 18.10.2022 passed by this Hon'ble Court in SLP (C) No. 17931 of



2022 is annexed hereto and marked as ANNEXURE P-21 (At page 258 to 259).

02.11.2022 The Petitioner's Review Application did not come up for hearing and no next date of hearing was reflected on the website of the Hon'ble NGT as well. Therefore, the Petitioner's advocate was constrained to address a letter to the Registry of the Hon'ble NGT, New Delhi seeking an urgent listing of its Review Application. In this email, it was highlighted that the time limit for complying with the order dated 29.08.2022 passed by the Hon'ble NGT in Original Application No. 124 of 2017 was on 29.11.2022, out of which a significant time had elapsed without the Petitioner's Review Application qua the said order being heard. That in spite of this, the Petitioner's Review Application did not come to be listed for a hearing. A true copy of the Petitioner's advocate's email dated 02.11.2022 is annexed hereto and marked as ANNEXURE P-22 (At page 260).

07.11.2022 The Petitioner's advocate visited and made enquiries with the Registry at the Hon'ble NGT, New Delhi and was informed that the matter is likely to be listed only after February, 2023. The Registry further informed the Petitioner's advocate that if early hearing is sought then an



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Interim Application to that effect should be preferred by them.

09.11.2022 The Petitioner's Review Application did not come up for hearing, and the Petitioner was constrained to prefer an Interim Application before the Hon'ble NGT being I.A. No. 173 of 2022 seeking an urgent listing of its Review Application.

A true copy of the I.A. No. 173 of 2022 dated 09.11.2022 preferred by the Petitioner before the NGT, Special Bench in Review Application No. 7 of 2022 (WZ) is annexed hereto and marked as **ANNEXURE P-23** (At page 261 to 269).

16.11.2022 Even the I.A. for early hearing filed by the Petitioner did not come up for hearing and the Petitioner's advocate was constrained to prefer a mentioning letter to the Registry of the Hon'ble NGT, New Delhi requesting that the papers of the Petitioner's application be made available to the bench of the Hon'ble Chairperson for the purposes of urgent oral mentioning on 17.11.2022.

A true copy of the email dated 16.11.2022 of the Petitioner's advocate is annexed hereto and marked as **ANNEXURE P-24** (At page 270 to 273).

17.11.2022 The Petitioner's advocate mentioned the matter before the three-judge bench of the Hon'ble



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Chairperson. In spite of making out the urgency in the matter, the Hon'ble Chairperson rejected the request for an early hearing.

Thus, the Petitioner was left with no other remedy save and except to either pay the exorbitant penalty or approach this Hon'ble Court.

22.11.2022

Hence, the present Special Leave Petition.



Item No.2

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

REVIEW APPLICATION NO.07 OF 2022 (WZ)

IN

ORIGINAL APPLICATION NO.124 OF 2017

[Disposed of on 29.08.2022]

Benzo Chem Industrial Pvt. Ltd.

.....Applicant

Versus

Arvind Manohar Mahajan & Ors.

....Respondent(s)

Date of hearing: 30.09.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Saurabh Kulkarni along with Mr. Allan David,
Advocates instructed by MZM Legal LLP.

Respondent : --

ORDER

By this Review Application, the applicant seeks review of the order dated 29.08.2022 passed by a Special Bench comprising of five judges in Original Application No.124/2017. As per settled law, all the Judges, who had heard this matter, are still there and therefore, the Registry is directed to place this matter at the earliest before the Honourable Chairperson for passing appropriate order.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 30, 2022
Review Application No.07 of 2022
npj



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IN THE SUPREME COURT OF INDIA

[ORDER XXI RULE 3(1)(a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

WITH PRAYER FOR INTERIM RELIEFIN THE MATTER OF:POSITION OF PARTIES

Before	In this
NGT,	Hon'ble
Principal	Court
Bench	

Benzo Chem Industrial Private Limited

Appellant Petitioner

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office address at 26/28-A, Cawasji Patel Street, Fort, Mumbai, Maharashtra-400001
Through the authorized representative,
Mr. Pravin Nathaji Patil

VERSUS

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|--|---------------------|-----------------------------------|
| 1. Arvind Manohar Mahajan
Aged about 48 years,
R/o Dasarkhed, Malkapur
Dist: Buldana, Maharashtra | Respondent
No. 1 | Contesting
Respondent
No. 1 |
| 2. Gita Arvind Mahajan
Age 42 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 2 | Contesting
Respondent
No. 2 |



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|----|--|---------------------|-----------------------------------|
| 3. | Sopan Laxman Ekde
Age 62 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 3 | Contesting
Respondent
No. 3 |
| 4. | Saguna Sopan Ekde
Age 63 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 4 | Contesting
Respondent
No. 4 |
| 5. | Mangala Ravindra Mahajan
Age unknown,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 5 | Contesting
Respondent
No. 5 |
| 6. | Ravindra Manohar Mahajan
Age 40 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana,
Maharashtra. | Respondent
No. 6 | Contesting
Respondent
No. 6 |
| 7. | Umesh Purushottam Narkhade
Age 35 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 7 | Contesting
Respondent
No. 7 |
| 8. | Nilesh Shankar Mahajan
Age 30 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 8 | Contesting
Respondent
No. 8 |



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|---|----------------------|------------------------------------|
| 9. Shobha Shankar Mahajan
Age 55 years,
Occupation: Agriculturist,
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 9 | Contesting
Respondent
No. 9 |
| 10. Ramesh Laxman Choudhary
Age 50 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 10 | Contesting
Respondent
No. 10 |
| 11. Nina Bajirao Tharkar
Age 57 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 11 | Contesting
Respondent
No. 11 |
| 12. Kadu Bajirao Tharkar
Age 40 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana,
Maharashtra. | Respondent
No. 12 | Contesting
Respondent
No. 12 |
| 13. Jankabai Ramesh Ekade
Age 40 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 13 | Contesting
Respondent
No. 13 |
| 14. Deputy Regional Officer,
Maharashtra State Pollution
Control Board, Regional
Office, Shastri Nagar, Akola,
Taluka & Dist. Akola
(Maharashtra). | Respondent
No. 14 | Contesting
Respondent
No. 14 |



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|--|----------------------|------------------------------------|
| 15. Maharashtra Industrial Development Corporation. Through, Executive Engineer
Dasarkhed, MIDC, Dist-
Buldhana, Malkapur 443101,
Maharashtra, India | Respondent
No. 15 | Contesting
Respondent
No. 15 |
| 16. Junior Inspector of Factories,
Goranshan Road,
Opp. Vaibhav Hotel,
Maharashtra. | Respondent
No. 16 | Contesting
Respondent
No. 16 |

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA AGAINST THE IMPUGNED ORDER DATED 30.09.2022 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL WESTERN ZONE BENCH, PUNE IN REVIEW APPLICATION no. 07 of 2022 (WZ) IN ORIGINAL APPLICATION NO. 124 OF 2017

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. That the Petitioner is filing the above Special Leave Petition under Article 136 of the Constitution of India against the impugned order dated 30.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Review Application No.7 of 2022 (WZ) in Original Application No. 124 of 2017. That vide the said order, the Hon'ble National Green Tribunal Western Zone Bench, Pune ["Hon'ble NGT"] transferred the review application of the Petitioner from the Western Bench, Pune to the Principal



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Review Application will become infructuous on 29.11.2022?

3. DECLARATION IN TERMS OF RULE 3(2)

The Petitioner states that no other petition seeking leave to appeal has been filed by him against the impugned order dated 30.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Review Application No.7 of 2022 (WZ) in Original Application No. 124 of 2017.

4. DECLARATION IN TERMS OF RULE 5

The annexures P-1 to P-24 produced along with the present SLP are true copies of the pleadings/documents which formed part of the records of the case in the Court/Tribunal below against whose order the leave to appeal is sought for in this petition.

5. GROUND

That the Petitioner seeks the indulgence of this Hon'ble Court to grant Special Leave to Appeal against the impugned orders inter-alia, on the following grounds, which are taken without prejudice to each other,

- A. That the Petitioner had preferred the Review Application No. 7 of 2022 against the order dated 30.09.2022 passed by the Hon'ble NGT in Original Application No. 124 of 2017 (WZ). In the said order, the Hon'ble NGT disposed off the Original Application No. 124 of 2017 (WZ) and imposed a penalty of INR Twenty-Five Crores Only. The order directed the Hon'ble NGT to deposit the said amount to the Respondent No. 14 within a period of three months i.e., until 29.11.2022.



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B. That pertinently, the order dated 30.09.2022 passed by the Hon'ble NGT suffers from error apparent on the face of record in as much as the Hon'ble NGT had incorrectly interpreted site visit report by the Respondent No. 14 of the Petitioner's concerned units on 17.07.2020 to hold the Petitioner "non-compliant". However, a bare perusal of the said site visit report as prepared by the Respondent No. 14 categorically notes the high degree of compliance on part of the Petitioner in the following terms,

"3. During the visit, the ETP was found to be in operation.

4. ...

5. ...

6. The industry has provided air pollution control system consisting of (illegible)..."

That thereafter, the report makes general suggestions with respect to compliance with statutory obligations and precautions to be taken. Pertinently, no non-compliance on part of the Petitioner has been stated in this report.

C. Therefore, the Hon'ble NGT's reliance on the Respondent No. 14's site visit report dated 17.07.2020 to hold that the Petitioner was non-compliant with environmental standards is patently incorrect in view of the specific observations recorded in the said site visit report itself.

D. That the Hon'ble NGT had also erroneously relied upon a report published in June, 2019 prepared by NEERI and a report dated 18.04.2017 prepared by the Food Hygiene and Health Laboratory, Pune ["FHHL, Pune"]. However, while



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placing reliance on the said reports, the Hon'ble NGT failed to take into consideration that the report prepared by NEERI was based on contaminated samples. That the samples were contaminated is made out by the fact that from the samples collected, NEERI found certain chemicals such as iron and manganese. The said chemicals are neither a raw material nor a consequent byproduct of the Petitioner's production process.

E. That the existence of such alien chemicals in the sample indicates that the said samples were not a fair representation of the status of the Petitioner's environmental compliance. That pertinently, the same NEERI report itself takes a note of this fact, observing that the Petitioner had fully functional ETPs of "sufficient capacity". It further noted that the units were able to maintain zero liquid discharge and that it had air scrubbers sufficient to handle the loads of air pollutants being generated in each of the two units.

F. That this being the case, the question of the Petitioner causing any kind of water pollution does not arise. For this reason, the Hon'ble NGT's order dated 29.09.2022 imposing a penalty of INR Twenty-Five Crores Only on the Petitioner is erroneous and suffers from errors patent on the face of the record.

G. That pertinently, the Petitioner's high degree of compliance to environment management standards is made out from a series of site visit reports prepared by the Respondent No. 14 over the ten years for which the Petitioner has been penalized by the Hon'ble NGT. For instance, site visit reports through



2017 such as the surprise visits on 15.11.2011, 28.02.2012, 20.02.2013, 29.10.2014, 20.05.2015, 06.02.2016, 17.03.2017, 21.07.2017, 12.10.2017 and 30.10.2018 specifically record that the Petitioner had full functional ETP facilities at both its units and that they maintained zero liquid discharge. Further, the said site visit reports also noted that there was no discharge outside the factory premises and that the Petitioner had provided a concrete nalla as well for seasonal flow or rain water storm. The Petitioner's compliance was noted in the following terms,

"3. They (the Appellant) has provided ETP consisting of primary, secondary, tertiary followed by MCE.

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5. During visit it is observed no any discharge outside of the factory premises.

6. They have provided concrete nalla for seasonal flow of rain water storm."



- H.** That as such, the Petitioner has good grounds for review in the Review Application No. 7 of 2022, and that there is utmost urgency in the matter on account of the fact that after 29.11.2022, the Petitioner's review application would become infructuous in as much as the Petitioner would be constrained to deposit the large sum of INR Twenty-Five Crores Only with the Respondent No. 14.
- I.** That upon filing the Review Application No. 7 of 2022 before the Hon'ble NGT, the Petitioner's Review Application was redirected to the Hon'ble National Green Tribunal, Principal Bench vide the impugned order dated 30.09.2022. The



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Hon'ble NGT refused to hear the Petitioner's Review Application on the ground that the order dated 29.08.2022 under review had been passed by a Special Bench comprising of five judge and for that reason, the Hon'ble NGT could sit on review on the said order. However, it is pertinent to note that the Special Bench of five judges is not currently sitting.

- J. That thereafter, the matter did not come up for hearing for several weeks before the Hon'ble Chairperson as per the directions of the Hon'ble NGT. That for this reason, the Petitioner's advocate preferred an email dated 01.10.2022 to the Registry of the Hon'ble National Green Tribunal Western Bench, Pune seeking urgent listing of the Petitioner's Review Application as per the impugned order dated 30.09.2022. In this email, it was highlighted that that the Petitioner was seeking urgent interim reliefs and an oral hearing before the Hon'ble Bench. However, the Petitioner's Review Application was not listed for hearing and the Petitioner's advocate was constrained to address another email dated 13.10.2022 to the Registry of the Hon'ble NGT, Pune Bench reiterating the urgency in the matter.



- K. That in spite of this, the Petitioner's Review Application did not come up for hearing and the Petitioner's advocate addressed another email dated 02.11.2022 to the Registry of the Hon'ble NGT, Principal Bench. In this email, it was highlighted that the time limit for complying with the order dated 29.08.2022 passed by the Hon'ble NGT in Original Application No. 124 of 2017 was on 29.11.2022, out of which



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a significant time had elapsed without the Petitioner's Review Application qua the said order being heard. That in spite of this, the Petitioner's Review Application did not come to be listed for a hearing.

- L. That for this reason, the Petitioner was constrained to prefer an Interim Application being I.A. No. 173 of 2022 in Review Application No. 7 of 2022 (WZ) on 09.11.2022. In the said I.A., the Petitioner highlighted the urgency in the matter with the last date of complying with the order dated 29.08.2022 fast approaching, and in view of the same prayed for an urgent hearing of the Petitioner's Review Application.
- M. That subsequent thereto, when the Petitioner's I.A. did not come up for hearing, the Petitioner's advocate an email dated 16.11.2022 to the Registry of the Hon'ble NGT, Principal Bench, New Delhi praying that the papers of the Petitioner's Review Application be placed before the bench of the Hon'ble Chairperson for the urgent oral mentioning of the Petitioner's I.A. No. 173 of 2022.
- N. That on 17.11.2022, the Petitioner's advocate orally mentioned the matter before the three-judge bench of the Hon'ble Chairperson. However, in spite of highlighting the urgency in the matter, the Hon'ble NGT, Principal Bench did not grant the Petitioner's prayer for a hearing of either its I.A or its Review Application.
- O. That the Petitioner has been made to run from pillar to post and in spite of this, the Petitioner has not been granted a



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hearing of its Review Petitioner. Pertinently, the Petitioner would be constrained to comply with the order under Review by 29.11.2022 and would have to deposit a large sum of INR Twenty-Five Crores with the Respondent No. 14.

- P. That in addition to this, the Petitioner is also the recipient of international certificates for its high degree of compliance. In this regard, the Petitioner has certificates under ISO 9001:2015 (for superior products conforming to statutory regulations), ISO 14001:2015 (for having superior environment management systems in place) and ISO 45001:2018 (for having superior workplace hazard management). The coming into effect of the order dated 29.08.2022 passed by the Hon'ble NGT will also deprive the Petitioner of its unblemished record and put its certificates at jeopardy. The same will result in unfair deprivation of the Petitioner's rights under Articles 14 and 19(1)(g).



That this Hon'ble Court passed an order in SLP (C) No. 17931 of 2022, whereby it was pleased to stay the operation of the judgment dated 21.09.2022 passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 4 of 2022 in the following terms,

“By way of ad-interim order, we stay the directions mentioned in paragraph 56 of the impugned order.

However, we clarify that since two Members (One Judicial and one Expert Member) are very much available for Western Zone Bench, all matters pertaining to Western Zone, Pune, including the matters arising out the States of Maharashtra and



Goa will be heard only by Pune Bench sitting at Pune."

That in spite of this, the Petitioner's Review Application is neither being heard by the Western Bench in Pune nor the Principal Bench in New Delhi.

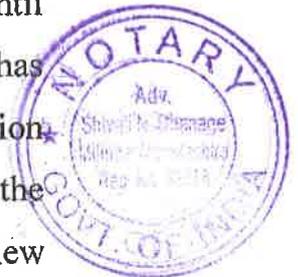
- R. That this being the case, the Petitioner has no effective and efficacious remedy other than approaching this Hon'ble Court.

6. **GROUND'S FOR INTERIM RELIEF**

A. That the Petitioner seeks review of the order dated 29.08.2022 passed by the Hon'ble NGT, Pune. Pertinently, the time granted to the Petitioner by such order to deposit a large penalty of INR Twenty-Five Crores with the Respondent No. 14 is only until 29.11.2022. That for this reason, the Petitioner has urgently sought the listing of its Review Application before both the Pune and New Delhi benches of the Hon'ble NGT. However, the Petitioner's Review Application has not come to be heard.

B. That the Petitioner had also moved an I.A. No. 173 of 2022 seeking an urgent listing of its Review Application. However, the said I.A. also did not come to be listed.

C. That the Petitioner also orally mentioned the matter before the three-judge bench of the Hon'ble Chairperson in the Hon'ble NGT, New Delhi.



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However, the Hon'ble NGT, New Delhi passed an oral order rejecting the urgent mentioning of the Petitioner.

- D. That the Petitioner has a good case for review. That however, in spite of the same the Petitioner has not been granted an opportunity to present its case. As a consequence, there is risk of the Petitioner's review application becoming infructuous due to the efflux of time and the Petitioner being deprived of its rights.
- E. The Petitioner is also the recipient of international certificates for its high degree of compliance. In this regard, the Petitioner has certificates under ISO 9001:2015 (for superior products conforming to statutory regulations), ISO 14001:2015 (for having superior environment management systems in place) and ISO 45001:2018 (for having superior workplace hazard management). The coming into effect of the order dated 29.08.2022 passed by the Hon'ble NGT will also deprive the Petitioner of its unblemished record and put its certificates at jeopardy.



7. **MAIN PRAYER**

In view of the foregoing, the Petitioner most respectfully prays that this Hon'ble Court be pleased to:

- A. Grant Special Leave to Appeal against the impugned order dated 30.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Review Application No.7 of 2022 (WZ) in Original Application No. 124 of 2017; and



B. Pass any other such order(s) which this Hon'ble Court deems fit and proper in the facts and circumstances of the instant case.

8. PRAYER FOR INTERIM RELIEF

In view of the foregoing, the Petitioner most respectfully prays that this Hon'ble Court be pleased to,

A. Grant an interim stay on the order dated 29.08.2022 passed by the Hon'ble NGT, Special Bench in Original Application No. 124 of 2017; and

B. Pass any other such order(s) which this Hon'ble Court deems fit and proper in the facts and circumstances of the instant case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONERS SHALL AS IN DUTY BOUND EVER PRAY.



DRAWN AND FILED BY:

(VIVEK JAIN)
ADVOCATE FOR THE PETITIONER

DRAWN ON: 19.11.2022
FILED ON: 22.11.2022
PLACE: NEW DELHI



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IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:

Benzo Chem Industries Pvt. Ltd. ... Petitioner

VERSUS

Arvind Manohar Mahajan & Ors. ... Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.



FILED BY

VIVEK JAIN
ADVOCATE FOR THE PETITIONER

FILED ON: 22.11.2022
NEW DELHI



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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:

BENZO CHEM INDUSTRIES PRIVATE LIMITED

...PETITIONER

VERSUS

ARVIND MANOHAR MAHAJAN & ORS.

...RESPONDENTS

AFFIDAVIT

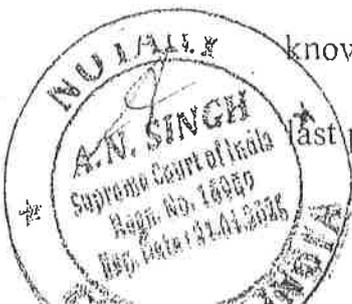
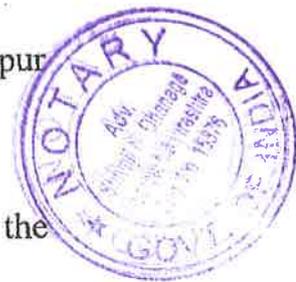
I, Pravin Nathaji Patil, S/o Shri Nathaji Patil, aged about 39 years, R/o Flat No. 003, B-Wing, Panvelkar vellozia CHS, Shirgaon, Badlapur (E), Maharashtra - 421503 do solemnly affirm and state as under:

1. That I am the authorized representative of the Petitioner in the present matter and am as such authorized and competent to affirm the present affidavit. I have been duly authorized by the Petitioner in this regard.

2. That I have read and understood that the contents of the Synopsis and List of Dates consisting of 17 pages (3 to 17) and Special Leave Petition consisting of 16 pages (2 to 17) and say that the facts stated therein are true and correct to best of my

knowledge and belief as derived from the records of the case and

last paragraph is prayer before this Hon'ble Court. I also state that



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the contents of the accompanying applications are true and correct to the best of my knowledge and belief.

- 3. I state that the copies of the documents annexed to the Special Leave Petition are true copies of their respective originals and form part of the record of the Courts below.

I identify the deponent who has Signed/Put T. in my presence

[Handwritten signature]

[Handwritten signature]

DEPONENT



VERIFICATION:

I, the abovenamed deponent, do hereby solemnly verify that the contents of the aforesaid affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Verified at 19 NOV 2022 this day of , 2022.



ATTESTED
[Handwritten signature]
A.N. Singh, Adv.
Notary Public
Govt. of India, Delhi

Mob.: 9718139591, 7982539115

[Handwritten signature]

DEPONENT



19 NOV 2022

Regd SR.No- 1262



Item No. 01

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

Review Application No. 07/2022 (WZ)
IN
Original Application No. 124/2017 (WZ)
(I.A. No. 156/2022, I.A. No. 158/2022 &
I.A. No. 173/2022)

Arvind Mahajan & Ors.

Applicant(s)

Versus

M/s. Benzo Chem. Industries Pvt. Ltd. & Ors.

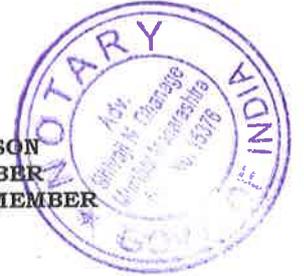
Respondent(s)

M/s. Benzo Chem. Industries Pvt. Ltd.
26/28-A, Cawasji Patel Street,
Fort, Mumbai-400001

Review Applicant

Date of hearing: 22.11.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER



IN CHAMBER BY CIRCULATION (Some of the members joining by VC)

ORDER

1. This application filed by the respondent project proponent (PP) seeks review of order of this Tribunal dated 29.08.2022 in OA No. 124/2017(WZ), *Arvind Mahajan & Ors. vs. M/s. Benzo Chem. Industries Pvt. Ltd. & Ors.*, requiring the PP to take remedial action for compliance of environmental norms and asking the statutory regulators to fix accountability for past violations, while fixing interim compensation on polluter pays principle.



2. The review application earlier came up for hearing before Members at Pune Bench but vide order dated 30.9.2022, the said Bench directed that the review application should be considered by all the Members who passed the order dated 29.8.2022. Accordingly, the matter is being dealt with by all the Members who were party to order dated 29.8.2022.

3. As the order would show, the Tribunal considered remedial action against damage to the environment by the operation of the PP in the light of material on record, particularly the stand of the State PCB. It was held that effluents were illegally discharged by the PP in the MIDC drain which adversely affected the environment and the fertility of agricultural land in the area. On testing of the water samples, parameters were found beyond norms. Cyanide was also found therein. The State PCB had issued directions to the unit to pay compensation for damage to the crops. The PP disputed the allegations and claimed that it was compliant and had taken steps for restoration of the environment. This stand of PP was disputed by the applicant.

4. In the light of above rival stands, the Tribunal considered the question of compliance and accountability for the violations. It was held:

"xxxxxx.....xxx

12. *Question for consideration is whether the unit was and is compliant and if not its accountability for past or continuing non compliances.*

13. *It is patent that from 2010 till atleast 2.10.2020, the unit remained non-compliant. We have already referred to first violation seen in the year 2010 and subsequent reports of 2017, February 2018 and NEERI report of June 2019 show that the violations continued. Even in August 2020, the State PCB recorded violations and the PP filed undertaking on 2.10.2020 to take further remedial action. Thus, there could be no question of matter being beyond limitation. Relief can be confined to five years before filing of the application. Though status after 2020 is not on record, the PP has to take remedial action as well as be held accountable for past violations of ten years. There are rival oral versions about current status -*



version of the applicants that violations are still continuing and version of the PP that violations have now been remedied.

14. Analysis reports of groundwater indicate deterioration in water quality on account of cationic and anionic imbalances. However, trace/micro pollutants could not be detected through GC/MS. Contamination of groundwater may be attributable to discharge of concentrated effluents from solar evaporation ponds. As per CTO granted by MPCB on 26.04.2016, the industry was to be operated on ZLD mode and thus has not been complied.

15. In view of above, a joint Committee of CPCB and State PCB may visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage. MPCB may consider compliance of stipulation under CTO after 2010 with reference to imposition of ZLD and liability to pay environmental compensation on polluter pays principle for restoration of environment. If the violations are still continuing, the State PCB may need to close the unit till compliance. For the past violations, for 5 years prior to filing of application and thereafter atleast till October 2020 compensation has to be levied which we quantify at Rs. 25 crores, following principles laid down inter alia in MC Mehta, (1987)1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257. As per information in public domain, operative revenue range of the PP is Rs. 100 to 500 crores. Learned Counsel for the PP, on instructions, states that its turnover is Rs. 250 to 300 crores. CSR amount as per section 135 of the Companies Act 2013 is 2% of profit per year. Taking into account totality of circumstances, we determine liability of the PP for violations from 2012 to 2020 at Rs.25 crore which is 10% of the turnover for one year i.e. Rs. 250 crores or 1% of turnover for 10 years at that rate. This amount may be deposited with MPCB within three months for being utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. The restoration plan may take into account decontamination of groundwater with duly approved process and contaminated soil remediation by amelioration, as considered appropriate. The State PCB will be the nodal agency for coordination and compliance. If any amount is leftover after restoration of adjoining area, the same may be utilized in accordance with the District Environment Plan of District Buldana. Compliance report shall be posted on MPCB website within six months."



5. In the review application, the stand of the PP that it had already taken measures to remedy the situation is reiterated and it is submitted that the finding of the Tribunal is erroneous. It is submitted that the unit is in industrial area where other industries are also operating which may



be the cause of pollution. Sample collection was unsupervised and thus correctness thereof was open to doubt. There is no justification for constituting a joint Committee for assessing the compensation as such committee could not be entrusted the functions of the Tribunal. The unit is providing large scale employment. Compensation of Rs. 25 crore was not justified as methodology to assess compensation evolved by the CPCB cannot be ignored.

6. We have duly considered the grounds of review and do not find any merit therein. The scope of review is not to revisit the conscious decision taken on merits. Points raised have already been adjudicated upon and finding recorded against the PP. The joint Committee has not been entrusted the functions of this Tribunal but asked to perform statutory functions of the regulators. CPCB formula can neither override the jurisdiction of this Tribunal nor nullify the mandate in judgments of the Hon'ble Supreme Court which have been referred to in the order, sought to be reviewed. As already mentioned in several orders of this Tribunal, including order dated 7.12.2021 in OA No. 144/2020, *Bhaskar Rao Vemuri vs. State of Andhra Pradesh*, the said formula may at best operate at floor level. Para 8 is quoted below:

"8. Principles for determining environmental compensation are well known and are based on restitution principle with deterrent element, as per financial capacity of the unit. While floor level compensation may be calculated on adhoc basis using rule of thumb, the same cannot have universal application, without considering the cost of remediation and financial capacity of the unit. In this regard, reference is made to law laid down in MC Mehta v. Union of India, (1987)1 SCC 395, pr 31, Indian Council for Enviro Legal Action Sterlite Industries (India) Ltd. v. Union of India (1996) 3 SCC 212 Pr 12,13,60,67, Uphaar Cinema, (2011) 14 SCC 481 Pr 101-108, Sterlite (2013) 4 SCC 575, pr 45-47, Goel Ganga Developers v. Union of India & Ors. (2018) 18 SCC 257 and MC Mehta, (2018) 18 SCC 397, pr 134. In the present case, the Committee has found serious violations resulting in damage to the environment spread over for long period. There is still failure to take remedial measures. There is loss of five lives within one year, apart from injuries to others. The turnover of the unit is 150 crores, as



shown from the document filed by the unit itself (page 360 of the paper book), which is insurance policy dated 10.08.2021 issued by the Future Generali. Premium for the insurance policy is Rs. 1,04, 13, 307/- from 01.07.2021 to 30.06.2022. Having regard to serious continuous violations and financial capacity of the unit, compensation has to be atleast 5% of the annual turnover i.e. 7.5 crore, under the head of loss to the environment. We assess the same accordingly. There is no scope of reduction of compensation as sought. The compensation already assessed under the said head may be excluded from the said amount. The amount may be deposited by the unit with the State PCB within three months, failing which State PCB may take coercive measures, including closure of the unit, till compliance by disconnecting the electricity. The amount may be utilized for restoration/improvement of the environment in the area by preparing an action plan by a five-member expert committee comprising of MoEF&CC, CPCB, State PCB, Prof. P. Jagannadha Rao, Dept. of Chemical Engineering, Andhra University, Vishakhapatnam and District Magistrate, Nellore with State PCB as the nodal agency for coordination and compliance. The execution of the action plan may also be overseen by the same Committee through an appropriate agency. The Committee may meet within two weeks, verify remedial steps taken to prevent any future incident compliance of environmental norms, including those claimed by the unit. The Committee may interact with the stake holders, including the management, staff and representatives of public. Proceedings may be conducted online, whenever considered necessary, except the site visit. Execution may be completed as far as possible within six months. Proposed compensation may be paid to the victims as early as possible."

7. As noted above, the CPCB formula is based merely on the days of violations without taking into account the extent of violation, cost of restoration and deterrent element with reference to financial capacity of the violator which are necessary components as per law laid down by the Hon'ble Supreme Court.

8. We, thus, do not find any merit in the review application which is dismissed.

All pending I.A.s will also stand disposed of.



Adarsh Kumar Goel, CP



Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

November 22, 2022
Review Application No. 07/2022 (WZ)
IN Original Application No. 124/2017 (WZ)
I.A. No. 156/2022, I.A. No. 158/2022 &
I.A. No. 173/2022
DV



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ITEM NO.63

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 21613/2022

(Arising out of impugned interim judgment and order dated 30-09-2022 in RA No. 07/2022 passed by the National Green Tribunal, Western Zone, Pune)

BENZO CHEM INDUSTRIES PRIVATE LIMITED

Petitioner(s)

VERSUS

ARVIND MANOHAR MAHAJAN & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.184328/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 28-11-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s) Mr. Atmaram N.S. Nadkarni, Sr. Adv.
Mr. Vivek Jain, AOR
Mr. Salvador Santosh Rebello, Adv.
Mr. Swapnil Srivastava, Adv.
Mr. Abhinav Jain, Adv.
Ms. Deepti Arya, Adv.
Ms. Arzu Paul, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Mr. Nadkarni, learned Senior Counsel, states that in view of the subsequent developments the petition does not survive and the petitioner would be required to file an appeal under the provisions of the National Green Tribunal Act.

He prays that the time to deposit the amount, as directed by NGT be extended for a period of one week so that the petitioner takes recourse to the remedy available in law.



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Reason:



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Learned senior counsel appearing for the petitioner seeks permission to withdraw this petition.

Permission is granted.

The special leave petition is, accordingly, dismissed as withdrawn.

The time granted by the NGT to deposit the amount is extended by a period of one week from today.

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)



A1

PROFORMA FOR FIRST LISTING

SECTION: XVII (New Delhi)

The case pertains to (Please tick/check the correct box):

 Central Act: (Title) **National Green Tribunal Act, 2010** Section: **Section 22** Central Rule: (Title) **N.A.** Rule No(s): **N.A.** State Act: (Title) **N/A** Section: **N.A.** State Rule: (Title) **N.A.** Rule No(s): **N.A.** Impugned Interim Order: (Date) **N/A** Impugned Final Order/Decree: (Date) **29.08.2022 & 22.11.2022** High Court: (Name) **N/A** Names of Judges: **Hon'ble Mr. Justice Adarsh Kumar Goyal, Chairperson****Hon'ble Mr. Justice Sudhir Agarwal,
Judicial Member****Hon'ble Mr. Justice Dinesh Kumar Singh,
Judicial Member****Hon'ble Prof. A. Senthil Vel, Expert Member****Hon'ble Dr. Vijay Kulkarni, Expert Member** Tribunal/Authority: (Name) **National Green Tribunal,
Western Zone Bench, Pune**1. Nature of matter: Civil Criminal2. (a) Petitioner/Appellant No.1: **Benzo Chem Industries
Pvt. Ltd.**(b) e-mail ID: **N/A**(c) Mobile phone number: **N/A**3. (a) Respondent No.1: **Arvind Manohar Mahajan
& Ors.**(b) e-mail ID: **N/A**(c) Mobile phone number: **N/A**

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4. (a) Main Category classification: **15 APPEAL AGAINST ORDERS OF STATUTORY BODIES**
 (b) Sub-classification: **1503 Tribunals**
5. Not to be listed before: **N/A**
6. (a) Similar disposed of matter with citation, if any, & case details: **SLP (civil) No. 21613/2022**
 (b) Similar pending matter with case details: **SPL (C) No. 17931 of 2022**
7. **Criminal Matters:**
 (a) Whether accused/convict has surrendered: Yes No
 (b) FIR No. **N.A.**
 (c) Police Station: **N.A.**
 (d) Sentence Awarded: **N.A.**
 (e) Period of sentence undergone including period of Detention/Custody Undergone: **N.A.**
8. **Land Acquisition Matters:**
 (a) Date of Section 4 notification: **N/A**
 (b) Date of Section 6 notification: **N/A**
 (c) Date of Section 17 notification: **N/A**
9. **Tax Matters:** State the tax effect: **N/A**
10. **Special Category (first petitioner/appellant only): N/A**
 Senior citizen > 65 years SC/ST Woman/child Disabled Legal Aid case In custody
11. **Vehicle Number (in case of Motor Accident Claim matters):**
N/A

Date: 02.12.2022

AOR for petitioner(s)/appellant(s)

VIVEK JAIN

AOR Code No. 2180

606, Adishwar Apartments,

34, Firozshah Road, New Delhi

Ph No:- 09990252039

Email: vivekjain.legal@gmail.com



SYNOPSIS

1. That the present Civil Appeal under Section 22 of the National Green Tribunal Act, 2010 [**“the NGT Act”**] impugns the order dated 29.08.2022 passed by the Hon’ble National Green Tribunal Special Bench [**“NGT Special Bench”**] in Original Application No. 124 of 2017 (WZ) [**“first impugned order”**], whereby the Hon’ble NGT Special Bench imposed a penalty of INR Twenty-Five Crores on the Appellant, and the order dated 22.11.2022 passed by the Hon’ble National Green Tribunal Principal Bench at New Delhi [**“NGT Principal Bench”**] in Review Application No. 7 of 2022 preferred by the Petitioner in Original Application No. 124 of 2017 (WZ) [**“second impugned order”**].
2. That the Appellant’s concerned units, mentioned in the impugned orders, are based in the MIDC Industrial Area, which is a heavily industrialized area with several other industries operating in the area. Further, the area has a common drainage system and the environmental engineering of the area is questionable.
3. That there is nothing to show any nexus between the Appellant and the alleged pollution in the area.
4. That in the impugned orders, the Hon’ble NGT failed to consider that the Appellant has constantly been in compliance with all the necessary environmental requirements. This is evidenced by the fact that the Appellant’s concerned units in MIDC Industrial Area have been granted the Consent to



C

Establish and Operate under Section 25 of the Water (Prevention and Control of Pollution) Act, the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous Wastes (Management and Handling) Rules, 1989.

5. Further, the Respondent No. 14 has also paid surprise visits to the Appellant's concerned units and at all such times, the Appellant's units were found to have operational ETPs and were operating at Zero Liquid Discharge. This being the case, the finding in the impugned order that the Appellant was non-compliant is misplaced.
6. That there are glaring inconsistencies in the impugned judgment, in as much as, the impugned findings that the Appellant is non-compliant are not factually correct and in fact, a bare perusal of Maharashtra PCB clearly shows that
 - (i) The Appellant has all along complied with the requirement of putting up a ETP Plant on the premises;
 - (ii) There is no discharge of effluent from the said plants; and
 - (iii) The Appellant's units are operating at ZLD;
 - (iv) The Appellant's concerned units have adequate scrubbers to counteract any air pollution.
7. That despite the said reports of the MPCB which is the only authority which has examined the insides of the Appellant's factory premises, the impugned judgment summarily, and without any reason imposes a penalty of 25 crores on the Appellant. That the impugned judgment presumes and assumes that the samples collected from the said industrial area, which were found to be exceeding in limit, is because of



E

LIST OF DATES AND EVENTS

DATE	PARTICULARS
1987	<p>The Appellant is incorporated as a private limited company under the provisions of the Companies Act, 1956. The Appellant is engaged in the business of manufacturing and supplying of pharmaceutical, agro-intermediates, specialty chemicals, and biocides in India. It has established a global presence through the export of its range of products to USA, Brazil, Europe, Japan, Korea, Taiwan etc and its facilities are ISO 9001:2015, ISO 14001:2015 & ISO 45001:2018 certified.</p> <p>That the Appellant has two manufacturing units in the MIDC Industrial Area, Dasarkhed Village, Malkapur, Buldana, Maharashtra situated at Survey No. 15 & 16 and B-26 & 27, and at Survey No. B-24 and 25 [“the concerned units”]. The concerned units of the Appellant directly employ approximately 800 people from the local area, and indirectly provides livelihood to more than 3000 other people. The MIDC Industrial Area is heavily industrialized and there are several other chemicals, agro-chemical and oil processing factories in the area. <u>They all share a common underground drainage system.</u></p>



- 30.01.2010 The Appellant's concerned units were granted Environmental Clearance as per the provisions of the Environment (Protection) Act, 1986.
- 15.11.2011 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.
- 28.02.2012 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.
- 20.02.2013 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.
- 29.10.2014 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.
- 20.05.2015 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both



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the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

26.04.2016 The Appellant's Unit was granted the Consent to Operate inter-alia under the provisions of the Water (Prevention and Control of Pollution) Act, 1974.

05.07.2016 The Respondent No. 14 issue interim directions to the Appellant herein under Sec. 33A of the Water (Prevention and Control of Pollution) Act, 1974 for some minor infractions. The same were promptly complied with by the Appellant.

14.07.2016 The Dr. Panjabrao Deshmukh Krishi Vidyapeeth, Akola wrote to the Appellant stating that the assessment of pollution in the area would require a complete evaluation of all industries in the area since their inception. As such, the impact of one factory alone could not be measured.



That the local villagers/unknown persons in the area where the concerned units are situated at, collected random samples. The said samples were collected without the supervision of any statutory/civic body and/or representatives of the Appellant. Further, there is no information available as to how the said samples were collected and subsequently handled.



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- 17.03.2017 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.
- 18.04.2017 The Food Hygiene and Health Laboratory, Pune ["FHHL, Pune"] published a report based on the random sample collected by the villagers/unknown persons in the area where the concerned units were located.
- 07.06.2017 The Appellant's Unit was granted the Consent to Operate inter-alia under the provisions of the Water (Prevention and Control of Pollution) Act, 1974.
- 11.07.2017 That the original applicants before the Hon'ble NGT preferred Original Application No. 124 of 2017 (WZ) whereunder they alleged damages to the soil and well water due to the discharge of hazardous effluents from the concerned units of the Appellant.
- 21.07.2017 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.



Σ

- 24.07.2017 The Appellant was served with a notice in the aforementioned Original Application No. 124 of 2017 (WZ).
- 01.10.2017 The Appellant filed its reply in Original Application No. 124 of 2017 (WZ).
- 24.10.2017 The Respondent No. 14 to the present petition filed its reply to the Original Application No. 124 of 2017 (WZ) wherein it stated that the Appellant herein, in view of its complete compliance, had been granted the requisite statutory clearances and consents to operate its concerned units.
- 08.12.2017 That in spite of being in full compliance, the Appellant, without prejudice to its rights and in complete good faith, made payments to the Respondent Nos. 1 to 13 at the rate of INR 40,000/- per acre of land.
- In view of the compensation given to the Respondents Nos. 1 to 13, their counsel appeared before the Hon'ble NGT and sought permission to withdraw the Original Application. But the same was not granted by the Hon'ble NGT.
- 08.12.2017 The Hon'ble NGT passed an order in the Original Application, directing the Appellant to engage the National Environment Engineering Research Institute, Nagpur ["NEERI"] for assessing the soil and groundwater pollution due to percolation of



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waste water. The Hon'ble NGT further directed that the report be presented in three months' time from the date of the order.

The Appellant promptly engaged NEERI as per the directions of the Hon'ble NGT. However, NEERI took almost 1.5 years to prepare this report.

30.10.2018 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

June, 2019 NEERI submitted its final report to the Appellant. However, the report was linear in its approach and did not take into consideration the pollutants being generated by the other industries in the area. Further, the report found iron and manganese in the samples collected which are neither a raw material nor a byproduct of the Appellant's production process. Pertinently, such pollutants are caused by paper mills, and the concerned area from where the samples were collected have a few paper mills in the vicinity.

Additionally, NEERI also noted that the Appellant had fully operational ETP facilities at its two units and had achieved zero liquid discharge status and had maintained the same.



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That in spite of the pollutants found in the report not being attributable to the Appellant, the Appellant undertook additional remedial measures to mitigate the same.

25.05.2021 The Appellant submitted a compliance affidavit before the Hon'ble NGT in the Original Application wherein it listed out the entirety of the remedial actions taken by it pursuant to the NEERI Report, and in full compliance of the orders of the Hon'ble NGT.

25.08.2021 The Respondent No. 14 conducted a surprise visit and check at the Appellant's concerned units. Both the units were found to be compliant. The units were found to have functional ETPs and were maintaining ZLD.

29.08.2022 That the Hon'ble NGT passed an order disposing off the Original Application No. 124 of 2017 [**"First Impugned Order"**]. In the said order, the Hon'ble NGT held the Appellant non-compliant and imposed a penalty of INR Twenty-Five Crores on the Appellant. It further directed a joint Committee of CPCB and State PCB to visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damages and decide



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whether the Appellant's facilities should be permitted to operate.

Pertinently, this order of the Hon'ble NGT suffers from errors patent on the face of the record.

21.09.2022 The Hon'ble High Court of Bombay at Goa passed a final order and judgment in PIL Writ Petition No. 4 of 2022 (*Goa Foundation v. National Green Tribunal, Principal Bench & Ors.*) and at Paragraph 56 of the said judgement, the Hon'ble High Court of Bombay at Goa was pleased to direct that,

"56. ...The constitution of the Special bench seated at New Delhi is illegal. Only the members of the Western Zonal Bench can hear matters pertaining to the Western Zonal Bench, including matters arising from Goa and Maharashtra."

26.09.2022 Aggrieved by the aforementioned order dated 29.08.2022 passed by the Hon'ble NGT, the Appellant preferred a Review Application before the Hon'ble NGT Western Bench, Pune under Section 19 of the National Green Tribunal Act r/w Rule 22 of the National Green Tribunal (Practice and Procedure) Rules, 2011 seeking a review of the said order.

The Appellant also filed interim application 156 of 2022 for urgent interim reliefs and interim application 158 of 2022 for oral hearing in the review application.



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30.09.2022 That the aforementioned Review Application No. 7 of 2022 came up for hearing before the Hon'ble NGT, Western Bench, Pune. However, the Hon'ble Bench refused to hear the matter on the ground that the judges who reviewed the matter are now sitting in the Hon'ble NGT, New Delhi, and that for reason, the Review Application should be heard by them. The Hon'ble NGT, therefore, directed the registry to place the matter before the Hon'ble Chairperson at the earliest.

01.10.2022 The Appellant's advocate preferred an email to the Registry of the Hon'ble NGT Western Bench, Pune seeking urgent listing of the Appellant's Review Application as per the impugned order dated 30.09.2022. In this email, it was highlighted that that the Appellant was seeking urgent interim reliefs and an oral hearing before the Hon'ble Bench.



13.10.2022 The Appellant's Review Application did not come up for hearing and the Appellant's advocate was constrained to address another email to the Registry of the Hon'ble NGT Western Bench, Pune seeking urgent listing of the application. The Appellant's Advocates also made telephonic calls to the Hon'ble Registry, and were informed that the matter has been redirected to the Registry of the Hon'ble NGT, New Delhi.



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18.10.2022 This Hon'ble Court passed an order in SLP (C) No. 17931 of 2022, whereby it was pleased to stay the operation of the judgment dated 21.09.2022 passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 4 of 2022 in the following terms,

"By way of ad-interim order, we stay the directions mentioned in paragraph 56 of the impugned order.

However, we clarify that since two Members (One Judicial and one Expert Member) are very much available for Western Zone Bench, all matters pertaining to Western Zone, Pune, including the matters arising out the States of Maharashtra and Goa will be heard only by Pune Bench sitting at Pune."

02.11.2022 The Appellant's Review Application did not come up for hearing and no next date of hearing was reflected on the website of the Hon'ble NGT as well. Therefore, the Appellant's advocate was constrained to address a letter to the Registry of the Hon'ble NGT, New Delhi seeking an urgent listing of its Review Application. In this email, it was highlighted that the time limit for complying with the order dated 29.08.2022 passed by the Hon'ble NGT in Original Application No. 124 of 2017 was on 29.11.2022, out of which a significant time had elapsed without the Appellant's Review Application qua the said order being heard. That in



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spite of this, the Appellant's Review Application did not come to be listed for a hearing.

07.11.2022 The Appellant's advocate visited and made enquiries with the Registry at the Hon'ble NGT, New Delhi and was informed that the matter is likely to be listed only after February, 2023. The Registry further informed the Appellant's advocate that if early hearing is sought then an Interim Application to that effect should be preferred by them.

09.11.2022 The Appellant's Review Application did not come up for hearing, and the Appellant was constrained to prefer an Interim Application before the Hon'ble NGT being I.A. No. 173 of 2022 seeking an urgent listing of its Review Application.



16.11.2022 Even the I.A. for early hearing filed by the Appellant did not come up for hearing and the Appellant's advocate was constrained to prefer a mentioning letter to the Registry of the Hon'ble NGT, New Delhi requesting that the papers of the Appellant's application be made available to the bench of the Hon'ble Chairperson for the purposes of urgent oral mentioning on 17.11.2022.

17.11.2022 The Appellant's advocate mentioned the matter before the three-judge bench of the Hon'ble Chairperson. In spite of making out the urgency in



the matter, the Hon'ble Chairperson rejected the request for an early hearing.

Thus, the Appellant was left with no other remedy save and except to either pay the exorbitant penalty or approach this Hon'ble Court.

22.11.2022 The Appellant preferred a Special Leave Petition in view of the non-listing of its urgent matter before the Hon'ble NGT, being SLP (C) No. 21613 of 2022. The matter was mentioned before this Hon'ble Court and circulation was granted for 28.11.2022.

That unbeknownst to the Appellant, the Hon'ble NGT constituted a Special Bench with some members joining through VC. The Appellant's Review Application No. 7 of 2022 was heard in chambers and was mechanically rejected [**"Second Impugned Order"**]. The Hon'ble NGT Special Bench did not assign any reasons for the same, save and except reiterating its incorrect observations from the previous impugned order dated 29.08.2022.

01.11.2022 Hence, the present Civil Appeal.



Item No. 02

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 124/2017(WZ)
M.A. No.299/2017(WZ)

Arvind Mahajan & Ors.

Applicant(s)

Versus

M/s. Benzo Chem. Industries Pvt. Ltd. & Ors.

Respondent(s)

Date of hearing: 29.08.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant(s): Ms. Beena S. Pardesi, Advocate

Respondent(s): Mr. Sangram Singh R. Bhonsle, Ms. Samridhi S. Jain, Mr. Nrupal A. Dingankar, Ms. Pushkara A. Bhonsle, Ms. Pawarsneha Vijay, Advocates for R-1

ORDER

1. Grievance in this application is against damage to the environment by the operation of M/s. Benzo Chem Industries Pvt. Ltd., Dasarkhed, Tah Malkapur, District Buldana, Maharashtra (the Project Proponent – PP).

2. Case of the applicants is that the PP is engaged in manufacturing pharmaceuticals, chemical, biocides, agrochemicals, perfumery chemicals, admantane, acetophenone & benzophenone, bulk drug, anisole & phenetole and other chemicals. In the year 2010, environmentally hazardous impact was noticed on adjoining agricultural lands and wells which was due to discharge of untreated hazardous effluents in the course



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of manufacturing of pharmaceutical and agrochemical activities. The matter was taken up with the PP who undertook to take remedial action. However, the violations continued and the Panchayat vide resolution dated 30.08.2010 resolved to cancel the NOC granted to the PP. The Panchayat also asked the Collector to close down the unit. A meeting was held with the Collector on 21.02.2011 and it was decided that the compliance status should be verified by conducting inspection. Inspection was conducted and water quality was found to be not upto the laid down standards. On 13.06.2011, the State PCB assured the applicants that remedial action will be taken. Again, in January 2017, the applicants found that reddish chemicals were coming to the agricultural lands. The contamination of well water was confirmed by test report dated 18.04.2017 from Food Hygiene and Health Laboratory, Pune, NABL accredited Lab.

3. The application was filed on 11.07.2017 and notice was issued on 24.07.2017. Respondents include the PP and the State PCB who have filed their respective replies.

4. The stand of the State PCB in its reply dated 24.10.2017 is that the two units of the PP have been granted requisite consents. Incident of discharge of effluents with rain water runoff into the MIDC drain due to overflow of solar evaporation tanks occurred on 20.07.2010. On 23.07.2010, effluents mixed rain water was found accumulated on the road side behind the factory of the PP which was percolating into open wells in the agricultural lands, 300 meters away from the factory. The solar evaporation pond was constructed and effluents stored in the pond without permission of the State PCB. Reports appeared in the local media on 23.02.2011 about deterioration of the well water due to discharge of effluents and also infirmity of the agricultural land behind the factory of



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the PP outside the MIDC area. Meeting was held by the SDM with the affected parties and the State PCB also received complaints which led to site inspection on 06.02.2016 and 07.02.2016 alongwith the farmers. Samples of water from the open wells in agricultural lands in the vicinity were taken and as per test report from Central Laboratory, MPCB, Navi Mumbai, parameters of BOD, COD and TDS were found to be beyond norms. There was contamination of cyanide in the adjoining well which had percolated from the factory of the PP. Show cause notice was issued to PP who denied responsibility for the contamination of water. The State PCB issued directions under Section 33A of the Water Act, 1974 and 31A of the Air Act, 1981 on 05.07.2016 to both the units requiring them to get damage to the crops assessed within periphery of 2 kms radius of the factory and to furnish Bank Guarantee of Rs. 2 lacs each. Thereafter on 07.09.2017, another inspection was conducted and analysis of the water samples showed contamination. Further inspection was conducted on 12.10.2017 and analysis reports were awaited. Accordingly, directions were issued to the PP on 23.10.2017 for remedial action after consulting NEERI-Nagpur.

5. The stand of the PP is that the cause of action relates to incident of 2010 and thus, the application filed in 2017 is barred by limitation. Mere fact that as per report dated 18.04.2017, discharge of hazardous effluents was found, will not provide limitation for moving the Tribunal. The PP has redressed the grievances and now has ZLD facility. 100% effluent is recycled into the cooling tower. It was pumping contaminated water from the wells and treating the same in multi-effect evaporators. It has hired service of a Facility for disposal of hazardous waste which is valid upto 10.07.2019.



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6. Vide order dated 08.12.2017, the Tribunal noted the stand of the PP that compensation @ Rs. 40,000/- per acre of land was paid to the 13 applicants and thus nothing survived in the matter. The application should be dismissed as withdrawn. The Tribunal did not accept this stand and observed that the issue involved not only the individual applicants but also remediation of soil and ground water pollution.

7. The PP filed further affidavit dated 27.05.2021 to the effect that on instructions of the State PCB dated 23.12.2017 and orders of this Tribunal dated 08.12.2017 and 10.07.2018, CSIR - NEERI was engaged to study the technical adequacy of ETP and ZLD and impact of industrial activities of the soil and the groundwater. The report has been received in June 2019 after investigation of water and soil quality showing that violations were continuing. The PP has undertaken to remedy the same. The summary and recommendations of the said report quoted in the reply are as follows:

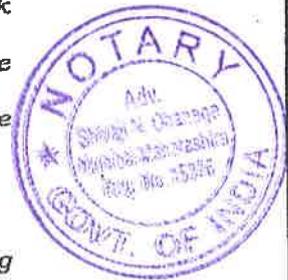
"Chapter 4 - SUMMARY AND RECOMMENDATIONS

4.1. Material Balance

- *The ETPs of both the units 1 and 2 have sufficient capacity to take up the liquid load generated by each of the units. The plants have enough spare capacity to take up the shock loads as well.*
- *The MEE at the end of the plants, makes it possible for the industry to maintain zero liquid discharge (ZLD)*
- *The air scrubbers too have sufficient capacity to handle the loads of air pollutants generated in each unit.*

4.2. Water Environment

- *The farming as well as domestic activities are being performed with the water from dug well and bore wells. Electricity is available for a few hours in the morning and during late evening and night, hence water from these sources is used during these hours.*
- *The depth of these wells is between 40-100 ft and water was found upto 40 ft during summer season.*
- *The water samples from within 500m of the industry had pH: 6.1-7.8 and TDS, Ca, Mg and Chloride*



beyond permissible limits for drinking water standards in both pre and post monsoon.

- Extremely high organic content are observed in sample, COD of W8: 4152 mg/l (pre monsoon) and 3900 mg/l (post monsoon). COD of W1, 6 and 7 in the range 274-313 mg/l. During post monsoon, W1 and W7 were observed to have COD of 248mg/l and 220 mg/l, respectively. Nitrate levels were also beyond permissible limits for Drinking water in W1, 2, 5, 6, 15, 18, 20 and 21 during pre monsoon and W7 in post monsoon. In general, the iron content in all the well waters is above the permissible limit of 0.3 mg/l. Manganese was found above permissible limits in samples from W 1, 6, 7 and 8 in both pre and post monsoon except W6 which was not selected for post monsoon monitoring.
- Based on the groundwater GC-MS/MS analysis for fine chemicals (2C, MA, OCBC, OMPAA, OCPAA and PCPAA) used as raw materials as well as finished products of the Benzochem industry are observed in low concentration in the groundwater in the wells 1, 7 and 8 within 500m radius of Benzochem Pvt. Ltd for both pre and post monsoon seasons.
- For post monsoon, water quality of W20, W40 and H2 samples was monitored based on the results obtained in pre monsoon since no contamination with fine chemicals was observed. These three samples were selected to represent the other samples in the 2km radius but not falling within 500m.
- During pre monsoon monitoring, the bore well samples within 500 m of the industry had pH in the range 7.0-8.3 and TDS: 1800-2500 mg/l. The water is hard (Hardness 700- 1360 mg/l and Chloride: 997-1059 mg/l) as well as saline. Comparatively the hand pump samples had total hardness and chloride within permissible limits in absence of alternate source.
- The bore well and hand pump samples had no organic content (COD: not detected)
- During pre monsoon monitoring, the iron content in all these samples except H2 were found beyond acceptable limits for drinking water and GC-MS/MS analysis revealed that the samples were not contaminated with fine chemicals at this depth.

4.3. Recommendations for Water Environment

Based on the groundwater analysis for both pre and post monsoon seasons, fine chemical contaminants are observed in the groundwater specially in well no 1, 7 and 8, which are adjacent to Benzochem Pvt. Ltd. Although, the concentrations of



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the fine chemicals contaminants are low, however, since the water quality does not meet drinking water standards, use of well water from W1, 7 and 8 for drinking and irrigation purposes should be discontinued immediately.

Some of the immediate measures are to be pump and treat, adsorption of residual organics by activated carbon followed by regular monitoring of the well water quality post treatment. This would restore well water quality as well prevent percolation of the contamination in the groundwater. The treatment option hence would be :

Pumping of ground water and its treatment via existing ETP of Benzochem Industries Private Limited (Pumping strategies with activated carbon water treatment/ Reverse Osmosis followed by Multiple effect Evaporation). The treatment of these well water should be carried out until the water quality becomes potable and fine chemicals are not detected. These wells are to be monitored at periodic intervals throughout the treatment procedure.

Further, in terms of priority, W8 has most number of fine chemicals and has the highest priority in terms of treatment. Considering the spare capacity in ETP of the industry, W8 water can be treated there along with the MEE. W1 and W7 are also to be treated and methods listed above can be utilized for these.

Alternatively, other options available for treatment of such contaminated ground water are:

- Recharge of the wells
- In-situ groundwater treatment
- In-situ immobilization of the contaminants (sealing, stabilization, capping, cutting off, fixing, advanced oxidation process)
- Permeable reactive barrier technology for treatment of dissolved phase organic fraction

Further exploration of the feasibility of either/or options mentioned above needs to be undertaken in order to prevent further deterioration and spread of groundwater quality.

4.4. Summary and Recommendation for Soil Environment

Soil samples were examined during the pre-monsoon period from the study area for general parameters as well as for the fine chemicals. The samples were taken from 15 cm and 30 cm before the surface. However, no fine chemicals were obtained in the samples at the respective depths. Soil sample from the query pit area (E1) was found to contain fine chemical.

Treatment of contaminated pit need to be assessed as per the level and depth of fine chemicals in the soil strata. Based on this, treatment options will be considered as per following



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- Soil depth analysis should be performed to assess the quantity of soil to be stabilized and check for no toxic leachates.
- Alternatively, the contaminated soil can be sent to Common Hazardous Waste Treatment and Disposal Facility (CHWTDF).

Till the treatment option for contaminated soil in the query pit area is finalized, the query pit area must not be used for any purpose."

8. The PP has also mentioned the steps taken for restoration of well water, soil environment. The PP has also filed order of the State PCB dated 29.09.2020 mentioning that starred question was raised in the Maharashtra Assembly in 2020 Session about the discharge of effluents by the PP in the agricultural land and non-compliances were observed by the State PCB during visit on 17.07.2020. In view of such consistent violations, the PP was granted hearing on 25.08.2020 at 3 p.m. by the Member Secretary, State PCB wherein the PP gave assurance to take remedial action. The State PCB accordingly issued following directions:



1. Industry shall carry out the work as per the NEERI report proactively.
2. Industry shall carry out well water restoration work as per the directions of the Board within 3 months period.
3. You shall make arrangements to arrest the contaminated rainwater run-off letting outside the industry premises.
4. You shall submit the Bank Guarantee of Rs. 5.0 Lakh's towards the compliance of these Interim Directions. The Bank Guarantee shall be submitted in favour of Regional Officer, M.P.C. Board, Amravati within 15 days from the date of issue of these directions.
5. It is decided that existing Bank Guarantee of Rs. 2.0 Lakh submitted by you is to be forfeited."

9. The PP filed reply on 02.10.2020 to the effect that ETP with MEE to achieve ZLD had been installed. The PP will undertake water restoration work as per NEERI report and MPCB's directions.



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10. The applicants have filed MA No. 83/2018 to the effect that non-compliance continued and water sample taken on 04.01.2018 was found to be contaminated as per report dated 08.02.2018. Presence of chemical substances was found in the water beyond prescribed limits. Some of the reports dated 08.02.2018 show as follows:

"Food Hygiene & Health Laboratory, A-512-513, Megacentre, Pune - Solapur Road, Hadapsar, Pune-411013

Sr. No.	Test Done	Result	Unit	Permissible Limit	Test Method
Table 2 General Parameters concerning substances undesirable in excessive amounts					
1	Iron (as Fe)	0.20	mg/l	1.0, Max	IS 3025 Part 53
2	Chloride (as Cl)	16394.92	mg/l	1000, Max	IS 3025 Part 32
3	Free residual Chlorine	<0.1	mg/l	Not Specified	IS 3025 Part 26
4	Fluoride (as F)	2.7	mg/l	1.5, Max	APHA 4500-F-D
5	Total hardness (as CaCO ₃)	16236.00	mg/l	600, Max	IS 3025 Part 21
6	Calcium (as Ca)	3015.62	mg/l	200, Max	IS 3025 Part 40
7	ChlDramines (as Cl ₂)	<1.0	mg/l	4.0, Max	IS 3025 Part 26
8	Magnesium (as Mg)	2117.02	mg/l	30, Max	IS 3025 Part 46
9	Copper (as Cu)	1.98	mg/l	1.5, Max	APHA 3113 B

Food Hygiene & Health Laboratory, A-512-513, Megacentre, Pune - Solapur Road, Hadapsar, Pune-411013

Sr. No.	Test Done	Result	Unit	Permissible Limit	Test Method
10	Manganese (as Mn)	79.91	mg/l	0.3, Max	APHA 3113 B
11	Sulphate (as SO ₄)	1670.04	mg/l	400, Max	IS 3025 Part 24
12	Nitrate (as NO ₃)	229.45	mg/l	45, Max	APHA 4500-NO ₃ -B
13	Phenolic compounds (as C ₆ H ₅ OH)	<0.001	mg/l	0.002, Max	IS 3025 Part 43
14	Selenium (As Se)	<0.005	mg/l	0.01, Max	IS 3025 Part 56
15	Silver (as Ag)	0.71	mg/l	0.1, Max	Annex J of IS 13428
16	Zinc (as Zn)	<0.05	mg/l	15, Max	IS 3025 Part 49
17	Anionic detergent (as MBAS)	0.050	mg/l	1.0, Max	Annex K of IS 13428
18	Mineral oil	<0.5	mg/l	0.5, Max	Clause 6 of IS 3025
19	Total Alkalinity (as CaCO ₃)	206.00	mg/l	600, Max	IS 3025 Part 23
20	Aluminum (as Al)	0.05	mg/l	0.2, Max	IS 3025 Part 55
21	Ammonia (as total ammonia -N)	8.01	mg/l	0.5, Max	IS 3025 Part 34



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22	Boron	0.44	mg/l	1.0, Max	IS 3025 Part 57
23	Barium(as Ba)	<0.5	mg/l	0.7, Max	Annex F of IS 13428
24	Sulphide (as H ₂ S)	<0.05	mg/l	0.05, Max	IS 3025 Part 29
25	BOD	950	mg/l	Not Specified	IS 3025 Part 44
26	COD	3744.0	mg/l	Not Specified	APHA 5220 B
27	Total Suspended Solids	240	mg/l	Not Specified	IS 3025 Part 17

Food Hygiene & Health Laboratory, A-512-513, Megacentre, Pune
- Solapur Road, Hadapsar, Pune-411013

Sr. No.	Test Done	Result	Unit	Permissible Limit	Test Method
01	Polychlorinated biphenyls	<0.00001	mg/l	0.0005, Max	APHA 6431-C
02	Total Arsenic(as As)	<0.005	mg/l	0.01, Max	APHA 3114C
03	Total Chromium (as Cr)	1.42	mg/l	0.05, Max	APHA 3113B
04	Mercury (as Hg)	<0.001	mg/l	0.001, Max	APHA 3112 B
05	Molybdenum (as Mo)	0.007	mg/l	0.07, Max	APHA 3113B
06	Nickel(as Ni)	0.75	mg/l	0.02, Max	APHA 3113B
07	Cadmium (as Cd)	0.25	mg/l	0.003, Max	APHA 3113B
08	Cyanide (as CN)	<0.005	mg/l	0.05, Max	IS 3025 Part 27
09	Lead (as Pb)	1.15	mg/l	0.01, Max	APHA 3113B
10	Polynuclear aromatic hydrocarbons (as PAH)	<0.0001	mg/l	0.0001, Max	APHA 6440
11	Trihalomethanes				
a)	Bromoform	<0.05	mg/l	0.1, Max	APHA 6232B
b)	Dibromochlorometha	<0.05	mg/l	0.1, Max	
c)	Bromodichlorometha	<0.05	mg/l	0.06, Max	
d)	Chloroform	<0.05	mg/l	0.2, Max	

11. We have heard learned Counsel for the parties.

12. Question for consideration is whether the unit was and is compliant and if not its accountability for past or continuing non compliances.

13. It is patent that from 2010 till atleast 2.10.2020, the unit remained non-compliant. We have already referred to first violation seen in the year 2010 and subsequent reports of 2017, February 2018 and NEERI report of June 2019 show that the violations continued. Even in August 2020, the State PCB recorded violations and the PP filed undertaking on



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2.10.2020 to take further remedial action. Thus, there could be no question of matter being beyond limitation. Relief can be confined to five years before filing of the application. Though status after 2020 is not on record, the PP has to take remedial action as well as be held accountable for past violations of ten years. There are rival oral versions about current status - version of the applicants that violations are still continuing and version of the PP that violations have now been remedied.

14. Analysis reports of groundwater indicate deterioration in water quality on account of cationic and anionic imbalances. However, trace/micro pollutants could not be detected through GC/MS. Contamination of groundwater may be attributable to discharge of concentrated effluents from solar evaporation ponds. As per CTO granted by MPCB on 26.04.2016, the industry was to be operated on ZLD mode and thus has not been complied.

15. In view of above, a joint Committee of CPCB and State PCB may visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage. MPCB may consider compliance of stipulation under CTO after 2010 with reference to imposition of ZLD and liability to pay environmental compensation on polluter pays principle for restoration of environment. If the violations are still continuing, the State PCB may need to close the unit till compliance. For the past violations, for 5 years prior to filing of application and thereafter atleast till October 2020 compensation has to be levied which we quantify at Rs. 25 crores, following principles laid down inter alia in MC Mehta, (1987)1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257. As per information in public domain, operative



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revenue range of the PP is Rs. 100 to 500 crores. Learned Counsel for the PP, on instructions, states that its turnover is Rs. 250 to 300 crores. CSR amount as per section 135 of the Companies Act 2013 is 2% of profit per year. Taking into account totality of circumstances, we determine liability of the PP for violations from 2012 to 2020 at Rs.25 crore which is 10% of the turnover for one year i.e. Rs. 250 crores or 1% of turnover for 10 years at that rate. This amount may be deposited with MPCB within three months for being utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. The restoration plan may take into account decontamination of groundwater with duly approved process and contaminated soil remediation by amelioration, as considered appropriate. The State PCB will be the nodal agency for coordination and compliance. If any amount is leftover after restoration of adjoining area, the same may be utilized in accordance with the District Environment Plan of District Buldana. Compliance report shall be posted on MPCB website within six months.

16. If any grievance survives or arises in future, it will be open to the aggrieved parties to take remedies in accordance with law.

The application will stand disposed of.

All pending applications will also stand disposed of.

A copy of this order be forwarded to CPCB, State PCB, District Magistrate, Buldana, Director, Agriculture Department, Maharashtra and Secretary, Ground Water Department, Maharashtra by e-mail for compliance.

Adarsh Kumar Goel, CP



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Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

August 29, 2022
Original Application No. 124/2017(WZ)
M.A.No.299/2017(WZ)
DV



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Item No. 01

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

Review Application No. 07/2022 (WZ)
IN
Original Application No. 124/2017 (WZ)
(I.A. No. 156/2022, I.A. No. 158/2022 &
I.A. No. 173/2022)

Arvind Mahajan & Ors.

Applicant(s)

Versus

M/s. Benzo Chem. Industries Pvt. Ltd. & Ors.

Respondent(s)

M/s. Benzo Chem. Industries Pvt. Ltd.
26/28-A, Cawasji Patel Street,
Fort, Mumbai-400001

Review Applicant

Date of hearing: 22.11.2022



CORAM:
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DIVESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

IN CHAMBER BY CIRCULATION (Some of the members joining by VC)

ORDER

1. This application filed by the respondent project proponent (PP) seeks review of order of this Tribunal dated 29.08.2022 in OA No. 124/2017(WZ), *Arvind Mahajan & Ors. vs. M/s. Benzo Chem. Industries Pvt. Ltd. & Ors.*, requiring the PP to take remedial action for compliance of environmental norms and asking the statutory regulators to fix accountability for past violations, while fixing interim compensation on polluter pays principle.



2. The review application earlier came up for hearing before Members at Pune Bench but vide order dated 30.9.2022, the said Bench directed that the review application should be considered by all the Members who passed the order dated 29.8.2022. Accordingly, the matter is being dealt with by all the Members who were party to order dated 29.8.2022.

3. As the order would show, the Tribunal considered remedial action against damage to the environment by the operation of the PP in the light of material on record, particularly the stand of the State PCB. It was held that effluents were illegally discharged by the PP in the MIDC drain which adversely affected the environment and the fertility of agricultural land in the area. On testing of the water samples, parameters were found beyond norms. Cyanide was also found therein. The State PCB had issued directions to the unit to pay compensation for damage to the crops. The PP disputed the allegations and claimed that it was compliant and had taken steps for restoration of the environment. This stand of PP was disputed by the applicant.

4. In the light of above rival stands, the Tribunal considered the question of compliance and accountability for the violations. It was held:

"xxxxxx.....xxx"

12. *Question for consideration is whether the unit was and is compliant and if not its accountability for past or continuing non-compliances.*

13. *It is patent that from 2010 till atleast 2.10.2020, the unit remained non-compliant. We have already referred to first violation seen in the year 2010 and subsequent reports of 2017, February 2018 and NEERI report of June 2019 show that the violations continued. Even in August 2020, the State PCB recorded violations and the PP filed undertaking on 2.10.2020 to take further remedial action. Thus, there could be no question of matter being beyond limitation. Relief can be confined to five years before filing of the application. Though status after 2020 is not on record, the PP has to take remedial action as well as be held accountable for past violations of ten years. There are rival oral versions about current status -*



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version of the applicants that violations are still continuing and version of the PP that violations have now been remedied.

14. Analysis reports of groundwater indicate deterioration in water quality on account of cationic and anionic imbalances. However, trace/micro pollutants could not be detected through GC/MS. Contamination of groundwater may be attributable to discharge of concentrated effluents from solar evaporation ponds. As per CTO granted by MPCB on 26.04.2016, the industry was to be operated on ZLD mode and thus has not been complied.

15. In view of above, a joint Committee of CPCB and State PCB may visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damage. MPCB may consider compliance of stipulation under CTO after 2010 with reference to imposition of ZLD and liability to pay environmental compensation on polluter pays principle for restoration of environment. If the violations are still continuing, the State PCB may need to close the unit till compliance. For the past violations, for 5 years prior to filing of application and thereafter atleast till October 2020 compensation has to be levied which we quantify at Rs. 25 crores, following principles laid down inter alia in MC Mehta, (1987)1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257. As per information in public domain, operative revenue range of the PP is Rs. 100 to 500 crores. Learned Counsel for the PP, on instructions, states that its turnover is Rs. 250 to 300 crores. CSR amount as per section 135 of the Companies Act 2013 is 2% of profit per year. Taking into account totality of circumstances, we determine liability of the PP for violations from 2012 to 2020 at Rs.25 crore which is 10% of the turnover for one year i.e. Rs. 250 crores or 1% of turnover for 10 years at that rate. This amount may be deposited with MPCB within three months for being utilized for restoration of environment, as per restoration plan to be prepared by the CPCB, State PCB, District Magistrate and Director, Agriculture Department, Maharashtra and nominee of Ground Water Department of Maharashtra within three months. The restoration plan may take into account decontamination of groundwater with duly approved process and contaminated soil remediation by amelioration, as considered appropriate. The State PCB will be the nodal agency for coordination and compliance. If any amount is leftover after restoration of adjoining area, the same may be utilized in accordance with the District Environment Plan of District Buldana. Compliance report shall be posted on MPCB website within six months."



5. In the review application, the stand of the PP that it had already taken measures to remedy the situation is reiterated and it is submitted that the finding of the Tribunal is erroneous. It is submitted that the unit is in industrial area where other industries are also operating which may



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be the cause of pollution. Sample collection was unsupervised and thus correctness thereof was open to doubt. There is no justification for constituting a joint Committee for assessing the compensation as such committee could not be entrusted the functions of the Tribunal. The unit is providing large scale employment. Compensation of Rs. 25 crore was not justified as methodology to assess compensation evolved by the CPCB cannot be ignored.

6. We have duly considered the grounds of review and do not find any merit therein. The scope of review is not to revisit the conscious decision taken on merits. Points raised have already been adjudicated upon and finding recorded against the PP. The joint Committee has not been entrusted the functions of this Tribunal but asked to perform statutory functions of the regulators. CPCB formula can neither override the jurisdiction of this Tribunal nor nullify the mandate in judgments of the Hon'ble Supreme Court which have been referred to in the order, sought to be reviewed. As already mentioned in several orders of this Tribunal, including order dated 7.12.2021 in OA No. 144/2020, *Bhaskar Rao Vemuri vs. State of Andhra Pradesh*, the said formula may at best operate at floor level. Para 8 is quoted below:

"8. Principles for determining environmental compensation are well known and are based on restitution principle with deterrent element, as per financial capacity of the unit. While floor level compensation may be calculated on adhoc basis using rule of thumb, the same cannot have universal application, without considering the cost of remediation and financial capacity of the unit. In this regard, reference is made to law laid down in MC Mehta v. Union of India, (1987)1 SCC 395, pr 31, Indian Council for Enviro Legal Action Sterlite Industries (India) Ltd. v. Union of India (1996) 3 SCC 212 Pr 12,13,60,67, Uphaar Cinema, (2011) 14 SCC 481 Pr 101-108, Sterlite (2013) 4 SCC 575, pr 45-47, Goel Ganga Developers v. Union of India & Ors. (2018) 18 SCC 257 and MC Mehta, (2018) 18 SCC 397, pr 134. In the present case, the Committee has found serious violations resulting in damage to the environment spread over for long period. There is still failure to take remedial measures. There is loss of five lives within one year, apart from injuries to others. The turnover of the unit is 150 crores, as



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shown from the document filed by the unit itself (page 360 of the paper book), which is insurance policy dated 10.08.2021 issued by the Future Generali. Premium for the insurance policy is Rs. 1,04, 13, 307/- from 01.07.2021 to 30.06.2022. Having regard to serious continuous violations and financial capacity of the unit, compensation has to be atleast 5% of the annual turnover i.e. 7.5 crore, under the head of loss to the environment. We assess the same accordingly. There is no scope of reduction of compensation as sought. The compensation already assessed under the said head may be excluded from the said amount. The amount may be deposited by the unit with the State PCB within three months, failing which State PCB may take coercive measures, including closure of the unit, till compliance by disconnecting the electricity. The amount may be utilized for restoration/improvement of the environment in the area by preparing an action plan by a five-member expert committee comprising of MoEF&CC, CPCB, State PCB, Prof. P. Jagannadha Rao, Dept. of Chemical Engineering, Andhra University, Vishakhapatnam and District Magistrate, Nellore with State PCB as the nodal agency for coordination and compliance. The execution of the action plan may also be overseen by the same Committee through an appropriate agency. The Committee may meet within two weeks, verify remedial steps taken to prevent any future incident compliance of environmental norms, including those claimed by the unit. The Committee may interact with the stake holders, including the management, staff and representatives of public. Proceedings may be conducted online, whenever considered necessary, except the site visit. Execution may be completed as far as possible within six months. Proposed compensation may be paid to the victims as early as possible."



7. As noted above, the CPCB formula is based merely on the days of violations without taking into account the extent of violation, cost of restoration and deterrent element with reference to financial capacity of the violator which are necessary components as per law laid down by the Hon'ble Supreme Court.

8. We, thus, do not find any merit in the review application which is dismissed.

All pending I.A.s will also stand disposed of.

Adarsh Kumar Goel, CP



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Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

November 22, 2022
Review Application No. 07/2022 (WZ)
IN Original Application No. 124/2017 (WZ)
I.A. No. 156/2022, I.A. No. 158/2022 &
I.A. No. 173/2022
DV



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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2022

(Section 22 of the National Green Tribunal Act, 2010)

IN THE MATTER OF:

POSITION OF PARTIES

	Before NGT, Principal Bench	In this Hon'ble Court
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Benzo Chem Industrial Private Limited

Appellant

Appellant

A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office address at 26/28-A, Cawasji Patel Street, Fort, Mumbai, Maharashtra-400001

Through the authorized representative,

Mr. Pravin Nathaji Patil

VERSUS

1. **Arvind Manohar Mahajan**
Aged about 48 years,
R/o Dasarkhed, Malkapur
Dist: Buldana, Maharashtra

Respondent
No. 1

Contesting
Respondent
No. 1

2. **Gita Arvind Mahajan**
Age 42 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra.

Respondent
No. 2

Contesting
Respondent
No. 2

3. **Sopan Laxman Ekde**
Age 62 years,
Occupation: Agriculturist

Respondent
No. 3

Contesting
Respondent
No. 3



2°

Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra.

- | | | | |
|----|--|---------------------|-----------------------------------|
| 4. | Saguna Sopan Ekde
Age 63 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 4 | Contesting
Respondent
No. 4 |
| 5. | Mangala Ravindra Mahajan
Age unknown,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 5 | Contesting
Respondent
No. 5 |
| 6. | Ravindra Manohar Mahajan
Age 40 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana,
Maharashtra. | Respondent
No. 6 | Contesting
Respondent
No. 6 |
| 7. | Umesh Purushottam
Narkhade
Age 35 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 7 | Contesting
Respondent
No. 7 |
| 8. | Nilesh Shankar Mahajan
Age 30 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 8 | Contesting
Respondent
No. 8 |
| 9. | Shobha Shankar Mahajan
Age 55 years,
Occupation: Agriculturist, | Respondent
No. 9 | Contesting
Respondent
No. 9 |



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Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra.

- | | | |
|---|----------------------|------------------------------------|
| 10. Ramesh Laxman Choudhary
Age 50 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 10 | Contesting
Respondent
No. 10 |
| 11. Nina Bajirao Tharkar
Age 57 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 11 | Contesting
Respondent
No. 11 |
| 12. Kadu Bajirao Tharkar
Age 40 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana,
Maharashtra. | Respondent
No. 12 | Contesting
Respondent
No. 12 |
| 13. Jankabai Ramesh Ekade
Age 40 years,
Occupation: Agriculturist
Resident of Dasarkhed,
Malkapur, Dist: Buldana
Maharashtra. | Respondent
No. 13 | Contesting
Respondent
No. 13 |
| 14. Deputy Regional Officer,
Maharashtra State Pollution
Control Board, Regional
Office, Shastri Nagar, Akola,
Taluka & Dist. Akola
(Maharashtra). | Respondent
No. 14 | Contesting
Respondent
No. 14 |
| 15. Maharashtra Industrial
Development Corporation.
Through, Executive Engineer
Dasarkhed, MIDC, Dist- | Respondent
No. 15 | Contesting
Respondent
No. 15 |



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Buldhana, Malkapur 443101,
Maharashtra, India

- | | | |
|---|-------------------|-------------------|
| 16. Junior Inspector of Factories, | Respondent | Contesting |
| Goranshan Road, | No. 16 | Respondent |
| Opp. Vaibhav Hotel, | | No. 16 |
| Maharashtra. | | |

**APPEAL UNDER SECTION 22 OF THE NATIONAL
GREEN TRIBUNAL ACT, 2010**

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE APPEAL OF THE
APPELLANT ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. That the present Civil Appeal under Section 22 of the National Green Tribunal Act, 2010 [**"the NGT Act"**] impugns the final order dated 29.08.2022 passed by the Hon'ble National Green Tribunal, Special Bench, New Delhi [**"NGT Special Bench"**] in Original Application No. 124 of 2017 (WZ) [**"first impugned order"**], whereby the Hon'ble NGT Special Bench imposed a penalty of INR Twenty-Five Crores on the Appellant, and the impugned final order dated 22.11.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune [**"NGT Principal Bench"**] in Review Application No. 7 of 2022 (WZ) preferred by the Petitioner in Original Application No. 124 of 2017 (WZ) [**"second**



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impugned order”] [collectively “impugned orders”] whereby the Hon’ble NGT dismissed the review application.

2. That the Appellant is incorporated as a private limited company under the provisions of the Companies Act 1956, and is engaged in the business of manufacturing and supplying of pharmaceutical, agro-intermediates, specialty chemicals, and biocides in India. It has established a global presence through the export of its range of products to USA, Brazil, Europe, Japan, Korea, Taiwan, etc. and its facilities are state-of-the-art, and are also ISO 9001:2015, ISO 14001:2015 & ISO 45001:2018 certified.

A true copy of the Appellant’s ISO 9001:2015 certificate is annexed hereto and marked as ANNEXURE A-1 (At page 59 to 60). A true copy of the Appellant’s ISO 14001:2015 and ISO 45001:2018 certificate is annexed hereto and marked ANNEXURE A-2 (At page 61 to 64).



3. The Respondent Nos. 1 – 13 are agriculturists who possess agricultural lands in Daserkhed village. They were the original applicants in Original Application No. 124 of 2017. Respondent No. 14 is the State Pollution Control Board and is responsible for implementing various environmental legislations and monitoring the environmental degradation and ecological imbalance in the state of Maharashtra. Respondent No. 15 the nodal Investment Promotion agency under the Government of Maharashtra. It provides businesses with infrastructure such as land, roads, water supply, drainage facilities and street lights etc. Respondent No. 16 is the Junior



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Inspector of factories, Akola and is responsible for inspecting and ensuring that every factory has effective arrangement for safety of the workers and treatment of wastes.

4. That the Appellant has two manufacturing units in the MIDC Industrial Area, Dasarkhed Village, Malkapur, Buldana, Maharashtra situated at Survey No. 15 & 14 and B-26 & 27 established in 1997, and at Survey No. B-24 & 25 established in 2009 [collectively "the concerned units"]. The concerned units of the Appellant directly employ approximately 800 people from the local area, and indirectly provides livelihood to more than 3000 other people. The MIDC Industrial Area is heavily industrialized and there are several other chemicals, agro-chemical and oil processing factories in the area. They all share a common underground drainage system. Both the Applicant's concerned units, collectively employ approximately eight hundred people from the local area. In addition to this, the Appellant indirectly employs an additional 3000 workmen through its transportation, sales and distribution centers.

A true copy of the map of the MIDC area where the Appellant's concerned units are situated are attached hereto and marked as ANNEXURE A-3 (At page 65).

5. That the Appellant's concerned units have been granted the Consent to Establish under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 under Section 21 of The Air (Prevention and Control of Pollution) Act, 1981 and Authorization/ Renewal of Authorization under Rule 5 of



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The Hazardous Wastes (Management and Handling) Rules, 1989. Pertinently, such consent is granted only after extreme scrutiny and imposition of terms and conditions by the various authorities. The Appellant's concerned units have been granted extensions from time to time and continue to hold a valid consent to establish as on date with the last consent being granted to it in 2022.

True and typed copy of the Consent to Establish granted to the Appellant's concerned units are annexed hereto and marked as ANNEXURE A-4 (At page 66 to 120).

6. Similarly, the Appellant's Concerned Units have been granted the Consent to Operate under Section 26 of the Water (Prevention & Control of Pollution) Act, 1974 & under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization / Renewal of Authorization under Rule 5 of the Hazardous Wastes (Management, Handling & Transboundary Movement) Rules 2008. Similar to the Consent to Establish, the Consent to Operate is granted after a stringent scrutiny. The State Pollution Board ensures that the conditions stipulated in the consents are adhered to. The Appellant has been in conformity with the same and further, the Appellant's Consent to Operate has been extended from time to time.

True and typed copy of the Consent to Operate granted to the Appellant's concerned units, dated 28.08.2022 are annexed hereto and marked as ANNEXURE A-5 (At page 121 to 290).



7. Further, the Appellant's concerned units have also been granted Environment Clearances by the State Impact Assessment Authority as per the provisions of the Environment (Protection) Act, 1986. That these consents and clearances are granted after a thorough scrutiny and specific conditions are prescribed by the authorities keeping in mind the specific nature of the industry.

A true copy of the Environment Clearance dated 30.01.2010 to the Appellant's concerned units are annexed hereto and marked as ANNEXURE A-6 (At page 291 to 329).

8. That the Respondent No. 14, being the State Pollution Control Board, was responsible for ensuring that all industries inter-alia in the area were compliant with the terms of the statutory consent to operate granted to them as well as to the various requirements under the many legislations pertaining to the environment. In this regard, the Respondent No. 14 would conduct surprise inspections and visits of the industries in the area, including the Appellants. The Respondent No. 14, since 2011 till date has conducted several such surprise inspections. Throughout this time, the Respondent No. 14 has consistently found the Appellant's concerned units to have operational ETPs and to be operating at Zero Liquid Discharge ["ZLD"]. True copies of the Respondent No. 14's surprise Site Visit Reports dated 15.11.2011, 28.02.2012, 20.02.2013, 29.10.2014, 20.05.2015, 17.03.2017, 21.07.2017, 30.10.2018 and 17.07.2020 are annexed hereto and marked as ANNEXURE A-7 (At page 330), ANNEXURE A-8 (At page 331 to 334), ANNEXURE A-9 (At page 335 to



338), ANNEXURE A-10 (At page 339 to 341), ANNEXURE A-11 (At page 342 to 343), ANNEXURE A-12 (At page 344 to 345), ANNEXURE A-13 (At page 346 to 347), ANNEXURE A-14 (At page 348), and ANNEXURE A-15 (At page 349 to 350) respectively.

9. That in spite of the high-degree of compliance demonstrated by the Appellant in maintaining its state-of-the-art facilities and operating with the necessary consents, a report dated 18.04.2017 was published by the Food Hygiene and Health Laboratory, Pune ["FHHL, Pune"] claiming that the Appellant's concerned units were causing pollution in the area. Pertinently, the samples basis which this report was prepared were unsupervised and randomly collected by the villagers/unknown persons from the area.

10. That on the basis of this report of the FHHL, Pune, the Respondent Nos. 1 – 13 herein filed Original Application No. 124 of 2017 before the Hon'ble NGT on 11.07.2017. The Appellant herein was arraigned as Respondent No. 1. The Respondent No. 14, Maharashtra Pollution Control Board, the Respondent No. 15, the Maharashtra Industrial Development Corporation, and the Respondent No. 16, Junior Inspector of Factories were arraigned as the other Respondents in this Original Application. The Respondent Nos. 1 – 13, in this Original Application, alleged that the land and well water being affected due to discharge of hazardous effluents from the Appellant's concerned units was affecting the cultivation of crops and the land being unfit for cultivation. They



accordingly prayed for a closure of the Appellant's units as well as for compensation from the Appellant.

A true typed copy of the Original Application No. 124 of 2017 filed on 11.07.2017 (without annexures) before the National Green Tribunal, Western Zone Bench, Pune is annexed hereto and marked as ANNEXURE A-16 (At page 357 to 362).

11. That the Respondent Nos. 1-13, in their Original Application, concede that upon raising the issue with the Appellant, the Appellant, in good faith, undertook certain remedial measures to avoid any nuisance by the local people. Pertinently, the Original Application thereafter directly makes allegations of pollution on part of the Appellant in January, 2017. Further, the Original Application has no material which specifically attributes the alleged pollution post 2017 to the Appellant herein.
12. That on 24.07.2017, the Appellant was served with a notice in the aforementioned Original Application No. 124 of 2017 (WZ). The Appellant, upon receipt of the notice, immediately joined the proceedings and tendered its reply to the Original Application on 01.10.2017. In its reply filed before the Hon'ble NGT, the Appellant herein specifically averred the following,

"2. ...The Applicant in Para 6 of the present Application have categorically admitted that the alleged violation came to light for the first time in the year 2010 and therefore the present Application as filed in July, 2017 is barred by limitation and therefore the same is not maintainable under the provisions of 14(3) of the National Green Tribunal Act, 2010..."



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11. ...The Respondent No. 1 Company (the Appellant herein) has been granted Environment clearance by the State Impact Assessment Authority on 30.01.2010 for the purpose of proposed Agro and pharmaceutical intermediate project at Malkapur, MIDC subject to terms and conditions therein. It is submitted that the Respondent No. 1 Company has been carrying out operations in accordance with terms and conditions of the Environment Clearance dated 30.01.2010. The Respondent No. 1 submits that the Applicants in the present Application have not categorically alleged the violation of the condition of the Environment Clearance.

12. ...It is further submitted that at the time of grant of EC, the SEAC saw fit to impose certain general and specific conditions upon the Respondent Company which have been adhered to by the Respondent Company. On perusing the Environment Clearance dated 30.01.2010, the SEAC was aware that 10CMD of domestic effluent and 80 CMD of plant operation effluent was to be generated and the same was to be treated in the effluent treatment plant having a capacity of 100 CMD. Furthermore, the SEAC had imposed a condition on the Respondent No. 1 pertaining to ground water monitoring being completely aware of the fact that effluents would be generated by the Respondent No. 1.

14. ...In pursuance of the conditions enumerated in the Environment Clearance dated 30.01.2010 and the Consent to Operated dated 07.06.2017 and 26.04.2016, the Respondent company has been carrying out regular sampling of air and water and that the same is within the prescribed standards. The Applicants are merely making allegations in the dark without substantiating the allegations they have raised, stating mere imputations without proofs...Authorized Persons of the Respondent No. 2 and 4



(Respondent Nos. 14 and 16 to the present Appeal) *have regularly visited the factory premises of the Respondent No. 1 Company periodically from 2010-11, 2011-12, 2012-13, 2013-14, 2015-16, 2016-17 and that particularly between the period immediately prior to the filing of the present Original Application No. 124/2017 on 10.07.2017, the Field Officer of the Respondent No. 2 visited the premises of the Respondent No. 1 on 17.03.2017 and again on 21.07.2017 and specifically observed that there is no discharge of industrial effluent outside the factory premises.*

A true and typed copy of the Appellant's Reply to the Original Application No. 124 of 2014, dated Nil/October, 2017 filed before the National Green Tribunal, Western Zone Bench, at Pune is annexed hereto and marked as ANNEXURE A-17 (At page 363 to 384).

13. That shortly thereafter, on 24.10.2017, the Respondent No. 14 to the present Civil Appeal filed its reply to the Original Application No. 124 of 2017 (WZ) wherein it stated that the Appellant was in complete compliance of all environment safety requirements and had a fully functional ETP and was operating at ZLD. The Respondent No. 14 further stated in its reply to the Original Application that the both of the Appellant's concerned units had been granted the requisite Consent to Establish, Consent to Operate and Environment Clearance. It also stated that during its visits dated 06.02.2016 and 07.02.2016, the MPCB had observed both units were compliant to all the terms and conditions given to them under the various statutory consents and clearances. The Respondent No. 14's reply made the following observations,



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"2(b) ...

i) *The Respondent Industry had provided complete EMS which includes Conventional effluent treatment plant for Low COD value effluent and Thermal Treatment technology for High COD Value consisting of collection tank, oil and grease tank, neutralization tank, primary clarifier, aeration tank (Diffused aeration system), secondary clarifier, Sludge Drying Beds SDB, Treated effluent storage tank, pressure sand Filter and activated carbon filter 3 stage Multiple Effect Evaporator (capacity 100 KL/Day). (MEE). During the visit ETP was found in operation. Condensate water from Cooling tower and mother liquor is again recycled in MEE for further treatment. The solid waste generated from MEE salt is disposed off by sale and achieved zero discharge.*

ii) *No discharge of untreated /treated effluent was observed within and outside the factory premises..."*

A true copy of the Respondent No. 14's Reply to the Original Application No. 124 of 2017, dated 24.10.2017 filed before the National Green Tribunal, Western Zone, Pune is annexed hereto and marked as ANNEXURE A-18 (At page 385 to 392).



14. That simultaneous to these proceedings, the Appellant, in spite of being in full compliance of all statutory and regulatory requirements, engaged in dialogue with the concerned villagers who were alleging damages to the environment. Without prejudice to its rights and in utmost good faith, the Appellant made payments to the Respondent Nos. 1-13 herein



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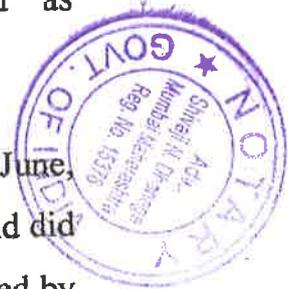
at the rate of INR 40,000/- per acre of land with a view to settle the matter.

15. That on 08.12.2017, and in view of the compensation given to the Respondents Nos. 1 to 13, their counsel appeared before the Hon'ble NGT and sought permission to withdraw the Original Application. But the same was not granted by the Hon'ble NGT.

16. That subsequent thereto, the Hon'ble NGT passed an order dated 08.12.2017 in Original Application No. 124 of 2017 directing the Appellant to engage the National Environment Engineering Research Institute, Nagpur ["NEERI"] for assessing the soil and groundwater pollution due to percolation of waste water. The Hon'ble NGT further directed that the report be presented in three months' time from the date of the order. The Appellant promptly engaged NEERI as per the directions of the Hon'ble NGT.

A true copy of the order dated 08.12.2017 passed by the Hon'ble NGT, Western Zone Behc, Pune in Application No. 124/2017 (WZ) is annexed hereto and marked as ANNEXURE A-19 (At page 393 to 394).

17. NEERI submitted its final report to the Appellant in June, 2019. However, the report was linear in its approach and did not take into consideration the pollutants being generated by the other industries in the area. Further, the report found iron and manganese in the samples collected which are neither a raw material nor a byproduct of the Appellant's production process. Pertinently, such pollutants are caused by paper



mills, and the concerned area from where the samples were collected have a few paper mills in the vicinity. Pertinently, in its report, NEERI noted that the Appellant had fully operational ETP facilities at its two units and had achieved zero liquid discharge status and had maintained the same. The summary of the report specifically reported that,

“The ETPs of both the units 1 and 2 have sufficient capacity to take up the liquid load generated by each of the units. The plants have enough spare capacity to take up the shock loads as well.

The MEE at the end of the plants, makes it possible for the industry to maintain zero liquid discharge (ZLD)

The air scrubbers too have sufficient capacity to handle the loads of air pollutants generated in each unit

It is pertinent to state that the manner in which the NEERI Study was conducted was erroneous in as much as it conducted a study of the samples in the area under the assumption that the Appellant herein was the only industry operating in the area. Moreover, the NEERI Report did not assess the status of crops and whether there has been an adverse impact on the same due to purported pollution on part of the Appellant.

A true copy of the NEERI Report dated June, 2019 is annexed hereto and marked as ANNEXURE A-20 (At page 395 to 461).

18. That in spite of some of the pollutants found in the report not being attributable to the Appellant on account of NEERI not



factoring in the existence of other industries in the area, the Appellant undertook additional remedial measures to mitigate the same. Thereafter, on 25.05.2021, the Appellant submitted a compliance affidavit before the Hon'ble NGT in the Original Application wherein it listed out the entirety of the remedial actions taken by it pursuant to the NEERI Report, and in full compliance of the directions of the Hon'ble NGT. Pertinently, the Appellant undertook the restoration works of the water levels of the purportedly polluted wells.

A true copy of the Appellant's compliance affidavit dated 25.05.2021 filed before the Hon'ble National Green Tribunal, Western Zone Bench, Pune in OA No. 124 of 2017 (WZ) is annexed hereto and marked as ANNEXURE A-21 (At page 462 to 477).

19. That in spite of all remedial measures taken by the Appellant in utmost good faith, reports based on faulty samples and for pollutants which were never part of its production process, and without there being any material to show that crops in the area had been adversely affected, the Hon'ble NGT Special Bench passed the first impugned order disposing off the Original Application No. 124 of 2017. In the said impugned order, the Hon'ble NGT held the Appellant non-compliant and imposed a penalty of INR Twenty-Five Crores on the Appellant. It further directed a joint Committee of CPCB and State PCB to visit the site and ascertain compliance status in terms of ground water contamination, status of soil contamination, impact on crops/production and other associated aspects of environmental damages and decide



whether the Appellant's facilities should be permitted to operate.

20. That Paragraph 8, the first Impugned Order places reliance on the Respondent No. 14's site visit dated 17.07.2020 to hold the Appellant herein non-compliant. At Paragraph 10 of the first Impugned Order, findings of the NEERI Report are reproduced which show that the samples collected were also found to contain Iron and Manganese. While at Paragraph 13 of the first Impugned Order, the following is noted,

"...It is patent that from 2010 till atleast 02.10.2020, the unit remained non-compliant. We have already referred to first violation seen in the year 2010 and subsequent reports of 2017, February 2017 and NEERI report of June, 2019 show that the violations continued..."

However, this order of the Hon'ble NGT Special Bench suffers from errors patent on the face of the record.

21. That independent to these proceedings qua the Appellant, on 21.09.2022, the Hon'ble High Court of Bombay at Goa passed a final order and judgment in PIL Writ Petition No. 4 of 2022 (*Goa Foundation v. National Green Tribunal, Principal Bench & Ors.*) and at Paragraph 56 of the said judgement, the Hon'ble High Court of Bombay at Goa was pleased to direct that,

"56. ...The constitution of the Special bench seated at New Delhi is illegal. Only the members of the Western Zonal Bench can hear matters pertaining to the Western Zonal Bench, including matters arising from Goa and Maharashtra."



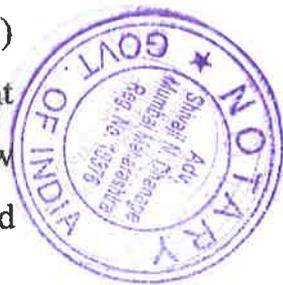
A true copy of the order dated 21.09.2022 passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 4 of 2022 is annexed hereto and marked as ANNEXURE A-22 (At page 478 to 497).

22. That aggrieved by the aforementioned order dated first Impugned Order dated 29.08.2022 passed by the Hon'ble NGT, the Appellant preferred a Review Application before the Hon'ble NGT Western Bench, Pune on 26.09.2022 under Section 19 of the National Green Tribunal Act r/w Rule 22 of the National Green Tribunal (Practice and Procedure) Rules, 2011 seeking a review of the said order. The Appellant also filed interim application 156 of 2022 for urgent interim reliefs and interim application 158 of 2022 for oral hearing in the review application.

A true copy of the Review Application No. 7 of 2022 (without annexures) dated 26.09.2022 filed by the Appellant before the Hon'ble NGT, Special Bench in Original Application No. 124/2017 (WZ) is annexed hereto and marked as ANNEXURE A-23 (At page 498 to 544).

A true copy of the I.A. No. 156 of 2022 (without annexures) dated 26.09.2022 filed by the Appellant seeking urgent interim reliefs before the NGT, Special Bench, in Review Application No. 7 of 2022 (WZ) is annexed hereto and marked as ANNEXURE A-24 (At page 545 to 578).

A true copy of the I.A. No. 158 of 2022 (without annexures) filed by the Appellant before the NGT, Special Bench in



Review Application No. 7 of 2022 (WZ) is annexed hereto and marked as ANNEXURE A-25 (At page 58 to 612).

23. That the aforementioned Review Application No. 7 of 2022 came up for hearing before the Hon'ble NGT, Western Bench, Pune on 30.09.2022. However, the Hon'ble Bench refused to hear the matter on the ground that the judges who reviewed the matter are now sitting in the Hon'ble NGT, New Delhi, and that for reason, the Review Application should be heard by them. The Hon'ble NGT, therefore, directed the registry to place the matter before the Hon'ble Chairperson at the earliest.

A true copy of the order dated 30.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Review Application No.7 of 2022 (WZ) in Original Application No. 124 of 2017 is annexed hereto and marked as ANNEXURE A-26 (At page 613).

24. That on 01.10.2022, the Appellant's advocate preferred an email to the Registry of the Hon'ble NGT Western Bench, Pune seeking urgent listing of the Appellant's Review Application as per the impugned order dated 30.09.2022. In this email, it was highlighted that that the Appellant was seeking urgent interim reliefs and an oral hearing before the Hon'ble Bench.

A true copy of the Appellant's advocate's email dated 01.10.2022 is annexed hereto and marked as ANNEXURE A-27 (At page 614).



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25. That even when by 13.10.2022, the Appellant's Review Application did not come up for hearing and the Appellant's advocate was constrained to address another email to the Registry of the Hon'ble NGT Western Bench, Pune seeking urgent listing of the review application. The Appellant's Advocates also made telephonic calls to the Hon'ble Registry, and were informed that the matter has been redirected to the Registry of the Hon'ble NGT, New Delhi.

A true copy of the Appellant's advocate's email dated 13.10.2022 is annexed hereto and marked as ANNEXURE A-28 (At page 615).

26. That independent of the proceedings qua the Appellant, this Hon'ble Court passed an order in SLP (C) No. 17931 of 2022, whereby it was pleased to stay the operation of the judgment dated 21.09.2022 passed by the Hon'ble High Court of Bombay at Goa in PIL Writ Petition No. 4 of 2022 in the following terms,

"By way of ad-interim order, we stay the directions mentioned in paragraph 56 of the impugned order.

However, we clarify that since two Members (One Judicial and one Expert Member) are very much available for Western Zone Bench, all matters pertaining to Western Zone, Pune, including the matters arising out the States of Maharashtra and Goa will be heard only by Pune Bench sitting at Pune."

A true copy of the order dated 18.10.2022 passed by this Hon'ble Court in SLP (C) No. 17931 of 2022 is annexed



hereto and marked as ANNEXURE A-29 (At page 616 to 617).

27. That even on 02.11.2022, the Appellant's Review Application had not come up for hearing and no next date of hearing was reflected on the website of the Hon'ble NGT as well. In view of the same, the Appellant's advocate was constrained to address a letter to the Registry of the Hon'ble NGT, New Delhi seeking an urgent listing of the Appellant's Review Application. In this email, it was highlighted that the time limit for complying with the order dated 29.08.2022 passed by the Hon'ble NGT in Original Application No. 124 of 2017 was on 29.11.2022, out of which a significant time had elapsed without the Appellant's Review Application qua the said order being heard. That in spite of this, the Appellant's Review Application did not come to be listed for a hearing. A true copy of the Appellant's advocate's email dated 02.11.2022 is annexed hereto and marked as ANNEXURE A-30 (At page 618).
28. That on 07.11.2022, the Appellant's advocate visited and made enquiries with the Registry at the Hon'ble NGT, New Delhi and was informed that the matter is likely to be listed only after February, 2023. The Registry further informed the Appellant's advocate that if early hearing is sought then an Interim Application to that effect should be preferred by them.
29. That on 09.11.2022, the Appellant's Review Application did not come up for hearing, and the Appellant was constrained to prefer an Interim Application before the Hon'ble NGT



being I.A. No. 173 of 2022 seeking an urgent listing of its Review Application. A true copy of the I.A. No. 173 of 2022 dated 09.11.2022 preferred by the Appellant before the NGT, Special Bench in Review Application No. 7 of 2022 (WZ) is annexed hereto and marked as ANNEXURE A-31 (At page 619 to 627).

30. That as on 16.11.2022, even the I.A. for early hearing filed by the Appellant did not come up for hearing and the Appellant's advocate was constrained to prefer a mentioning letter to the Registry of the Hon'ble NGT, New Delhi requesting that the papers of the Appellant's application be made available to the bench of the Hon'ble Chairperson for the purposes of urgent oral mentioning on 17.11.2022.

A true copy of the email dated 16.11.2022 of the Appellant's advocate is annexed hereto and marked as ANNEXURE A-32 (At page 628 to 631).

31. That on 17.11.2022, the Appellant's advocate mentioned the matter before the three-judge bench of the Hon'ble Chairperson. In spite of making out the urgency in the matter, the Hon'ble Chairperson rejected the request for an early hearing. Thus, the Appellant was left with no other remedy save and except to either pay the exorbitant penalty or approach this Hon'ble Court.

32. That aggrieved by the non-listing of its Review Application, the Appellant herein preferred a SLP before this Hon'ble Court, being SLP (C) No. 21613 of 2022 impugning the order dated 30.09.2022 passed by the Hon'ble NGT Western Bench



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wherein it refused to hear the Appellant's Review Application and transferred the same to the Principal Bench in spite of the matter being a Western Zone Matter. That the said SLP was mentioned before this Hon'ble Court on 22.11.2022 and the Hon'ble Chief Justice was pleased to grant urgent circulation for 28.11.2022.

33. That unbeknownst to the Appellant herein, a Special Bench of the Hon'ble NGT Western Zone at Pune was constituted, with some members of the Principal Bench at New Delhi joining through VC, and the Appellant's Review Application was taken up in the chambers on 22.11.2022. Without affording an opportunity to the Appellant to highlight the errors patent on the face of record in the first impugned order dated 29.08.2022, this Special Bench proceeded to dismiss the Review Application (second impugned order) without paying any heed to the grounds urged by the Appellant and simply reiterating its previous order dated 29.08.2022.
34. That the Appellant came to learn about this order upon a routine check for the date of listing of its Review Application on the Hon'ble NGT's website on 27.11.2022.
35. That the Appellant's SLP (C) No. 21613 of 2022 came up for hearing on 28.11.2022. The matter was withdrawn by the Appellant in view of the aforementioned order. However, this Hon'ble Court was pleased to pass an order dated 28.11.2022 whereby an extension of one week was granted to the Appellant to comply with the order of 29.08.2022 passed by the Hon'ble NGT Special Bench.



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A true copy of the order dated 28.11.2022 passed by this Hon'ble Court in SLP (C) No. 21613 of 2022 is annexed hereto and marked as ANNEXURE A-33 (At page 632 to 633).

36. That aggrieved with the first impugned final order dated 29.08.2022 in Original Application No. 124 of 2017 and second impugned final order dated 22.11.2022 in Review Application No. 7 of 2022 by the Hon'ble NGT Special Bench, the Appellant has preferred this present Civil Appeal on grounds more particularly enumerated hereunder, and taken without prejudice to each other,

GROUNDS

The Appellant is challenging the Impugned Judgment inter-alia on the following grounds, taken without prejudice to one another,

- A. That the two concerned units of the Appellant were first granted the "Consent to Establish" under section 25 of the Water (Prevention and Control of Pollution) Act, 1974, Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Rule 5 of the Hazardous Waste Management Rules, 1989 by the Maharashtra Pollution Control Board on 08.08.1997 and the "Consent to Operate" under section 26 of the Water (Prevention and Control of Pollution) Act, 1974, Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Rule 5 of the Hazardous Waste Management Rules 1989 was granted to the Appellant on 11.09.1998. That thereafter, the two concerned units have



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been granted Environment Clearance under EIA Notification 2006 bearing number UAN No. 19383 by the Government of Maharashtra from time to time, with the most recent Environment Clearance being granted to the Appellant on 10.11.2020.

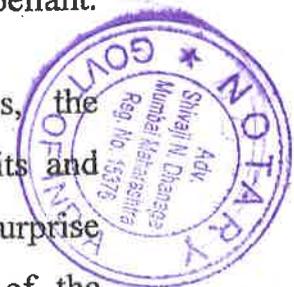
- B.** That pertinently, the Environment Clearance and the other statutory consents granted to the Appellant by the Government have never been challenged, and even the Original Applicants have challenged it neither before the Hon'ble NGT nor any other authority.
- C.** That in addition to these statutory consents and clearances granted to the Appellant under domestic law, the Appellant has also been the recipient of several internationally recognized standards for its high degree of compliance to international recognized best practices. The Appellant has inter-alia been recognized as compliant of ISO 9001:2015 (for superior products conforming to statutory regulations), ISO 14001:2015 (for having superior environment management systems in place) and ISO 45001:2018 (for having superior workplace hazard management). Thus, these recognitions clearly demonstrate that the Appellant has always adhered to the highest acceptable standards while engaging in the manufacturing of chemicals.
- D.** That on account of the Appellants adherence to such high standards at the time of manufacturing its chemicals, the Appellant has established a global presence through the



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export of its products to inter-alia USA, Brazil, Europe, Japan, Korea, and Taiwan.

- E. That the two concerned units of the Appellant have a well-functioning and state of the art Effluent Treatment Plant ["ETP"] having a primary, secondary and biodegradation facility. In addition to this, the Appellant's concerned units have also achieved Zero Liquid Discharge ["ZLD"]. In fact, the Appellant's units are the only units in the MIDC Industrial Area, Malkapur which is equipped with a well-functioning ETP facility and the only ones to have achieved ZLD. This being the case, the Hon'ble NGT erred in holding that the Appellant's units are responsible for liquid discharge and water contamination in the adjoining areas.
- F. That pertinently, the two concerned units of the Appellant are subjected to regular audits by international agencies, to assess its safety and environmental management mechanisms. These audits are a part of the international compliance standards of ISO bestowed upon the Appellant.
- G. That in addition to these international audits, the Appellant's units are also subject to surprise visits and checks by the MPCB. However, in spite of such surprise visits and checks, the environment compliance of the Appellant's units have been found to be compliant throughout the years for which it has been penalized. The reports of such visits prepared by the MPCB categorically noted the high-degree of compliance and that the



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Appellant's units were operating on ZLD mode and the ETP was operational and in good working condition.

- H. That the MPCB, in the aforementioned manner, paid a surprise visit to the Appellants units on 06.02.2016, slightly prior in time to the filing of the Original Application, and made the following observations in its report,

"A. ...

B. ...During visit ETP Was found in operation as well as MEE was found in operation. They are recycling the condensate water for cooling tower. The mother liquor is again recycled in MEE for treatment. The solid waste is generated from MEE i.e. the salt is disposed off by sale. They have achieved zero discharge.

C. No any discharge of untreated/treated effluent was observed within & outside the factory premises.

(emphasis supplied)

- I. That even the site visit reports referred to by the Hon'ble NGT in the Impugned Judgment viz., reports dated 17.07.2020 also contain observations which indicate that the Appellant was always compliant of all environment-friendly practices expected from it. That in spite of this, the Hon'ble NGT concluded that the aforesaid reports showed that the Appellant was non-compliant. Thus, the same is an error apparent on the face of the record committed by the Hon'ble NGT.

- J. That the site visit report dated 17.07.2020 prepared by the MPCB categorically states that,



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"3. During the visit, the ETP was found to be in operation.

4. ...

5. ...

6. The industry has provided air pollution control system consisting of (illegible)..."

That thereafter, the report makes general suggestions with respect to compliance with statutory obligations and precautions to be taken. Pertinently, no non-compliance on part of the Appellant has been stated in this report.

K. Thus, the Hon'ble NGT's reliance on the MPCB's visit to the Appellant's units on 17.07.2020 to conclude that the Appellant was "non-compliant" is patently incorrect in view of the site visit report prepared by the MPCB upon such visit. That the impugned orders erroneously place reliance on isolated site visit reports to hold the Appellant non-compliant and failed to consider the entirety of the documents placed on record.

L. That in fact, the Appellant has continued to be in compliance with the requisite environmental safety management standards in as much as it consistently ensured that its state-of-the art ETP was operational and maintained ZLD status. That this being that case, it is incorrect to hold that the Appellant was in any violation. More so, a violation necessitating a penalty of INR 25 crores as imposed by the Hon'ble NGT.



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M. That for instance, the MPCB's site visit report dated 25.08.2021 also makes the following observations with respect to the Appellant's environmental compliance,

"3. They (the Appellant) has provided ETP consisting of primary, secondary, tertiary followed by MCE.

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5. During visit it is observed no any discharge outside of the factory premises.

6. They have provided concrete nalla for seasonal flow of rain water storm."

N. That similar observations can be found in the MPCB site visit reports dated 17.03.2017, 21.07.2017, 12.10.2017, 30.10.2018, etc. That therefore, the Appellant has consistently conformed to the requisite standards. This being the case, the Hon'ble NGT's findings are based on an erroneous interpretation and are contrary to the findings of the MPCB itself.

O. That pertinently, for the period before 2010 and from 2011 to 2017, there have no complaints or specific averments made by the Original Applicants. Further, contrary to the Hon'ble NGT's findings, there is nothing on record to suggest that the Appellant has been in any breach of an environment standard. In fact, the Appellant has consistently maintained a state-of-art ETP facility at both its concerned units, and ensured that there was no contamination or collection of water around its factories' premises. These facts are specifically recorded in the site visit reports prepared by MPCB over the years.



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- P. That in view of such proper functioning of the ETP facilities of the Appellant and its status of ZLD, it is not possible that the Appellant's concerned units could be responsible for the alleged environmental breaches.
- Q. That in addition to the erroneous reliance upon the MPCB site visit dated 17.07.2020 to the Appellant's concerned units, the Impugned Judgment also places much reliance on the NEERI Report. That the NEERI Report was prepared pursuant to the Hon'ble NGT's order to investigate into possible contamination by the Appellant. That for this reason, the NEERI Report failed to take into consideration the several other industries in the area were operating. Thus, the said report of 2019 fails to capture the true contribution of the other industries in the area towards environmental degradation. For this reason, it incorrectly attributes disproportionate blame to the concerned units of the Appellant.
- R. That the Appellants concerned two units are located in the Malkapur industrial area which is a major industrial area developed by MIDC, which is a corporation of Ministry of Industry and Labour, Government of Maharashtra. That this industrial area has other numerous chemicals, agro-chemical and oil processing factories and has a common underground drainage system.
- S. That specifically, the NEERI, in order to analyze the groundwater, collected samples during a field visit from



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open dug wells, bore wells and handpump located within 500 m and 2 kms of the concerned two units. Similarly, for the soil quality analysis, soil samples were collected within 500 m and 2 kms periphery of the said units. That however, the NEERI Report failed to take into account that there are other industries including paper mills within the sampling radius of NEERI (i.e., 500 m and 2 kms).

T. That thus, the scope of the study was quite narrow and was conducted only to assess the impact of the industrial activities of the said units on the soil and groundwater. Instead, a comprehensive study detailing the raw materials and finished products of the nearby factories, the waste treatment systems of the factories, and their proximity to the wells of the Applicants should have been carried out by NEERI to provide a true and fair report of the alleged groundwater contamination.

U. That moreover, there are several agriculturists in the area whose lands are also close to the Appellant's concerned units. However, they have never raised any complaints of any form of contamination being caused by any pollution from the Appellant's concerned units.

That pertinently, the wells W1, W7 and W8 are adjacent to certain paper mills and the possibility that the wells may be contaminated by the effluents discharged from these paper mills has not been considered by the NEERI Report. That, in fact, NEERI found certain chemicals in the samples which it had collected, such as iron and manganese, which



are neither a raw material nor a consequent pollutant of the Appellant's manufacturing process. Thus, the samples collected by NEERI were evidently contaminated and not a fair representation of the Appellant's compliance. For this reason, it is clear that the report also failed to consider the existence of the other industries in the area as contributors of the pollutants found in the samples.

- W. That even the NEERI Report makes note of the fact that the Appellant's units had fully functional ETP's of "sufficient capacity". It further noted that the units were able to maintain zero liquid discharge and that it had air scrubbers sufficient to handle the loads of air pollutants being generated in each unit.
- X. That as such, it is evident that the Appellant's units, in themselves, were completely compliant with all requisite standards. In fact, the units had facilities over and above what was required and the adjoining other units in the area were able to maintain. That as such, the samples, collected from a heavily industrial area, upon which the NEERI Report bases itself, is not a true and correct representation of the Appellant's compliance of high environmental standards.
- Y. That thus, the Hon'ble NGT's reliance on the NEERI Report to hold the Appellant non-compliant and its order of penalty of INR 25 crores on the Appellant is erroneous in as much as it incorrectly attributes the general pollution of the area caused due to its heavy industrialization upon the



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Appellant. That pertinently, the Appellant has consistently maintained high standards of environmental compliance, and in spite of the same, is being penalized incorrectly.

Z. That the Hon'ble NGT, in the impugned judgment has also placed reliance on the report dated 18.04.2017 prepared by the Food Hygiene and Healthy Laboratory, Pune ["FHHL"]. However, the Hon'ble NGT failed to consider that the sample, basis which the said report was prepared has been collected on or around 14.03.2017 in the absence of any representative of any government authority or of the Appellant. For this reason, it is unknown as to the manner of its collection and subsequent handling.

AA. That this, the FHHL Report dated 18.04.2017 does not portray a correct picture of the Appellant's units' compliance with environmental standards. It is important to highlight that even when NEERI collected samples, the same were found to be contaminated. Therefore, the FHHL samples, which were collected in a manner so as to make their very authenticity questionable were almost certainly contaminated due to poor collection technique and subsequent handling, and cannot be considered a reliable source of evidence to justify the penalty of INR 25 crores imposed upon the Appellant by the Hon'ble NGT.

BB. That it is pertinent to mention that the period for which the Appellant has been penalized for polluting the area of Malkapur of hazardous waste has seen a consistent annual increase of yield in the area.



- CC. That as such, the original applicants had failed in providing any cogent evidence to specifically attribute any contamination specifically to the Appellant. However, in spite of the same, the Hon'ble NGT placed an incorrect reliance on the aforementioned reports to hold the Appellant non-compliant. However, such a finding cannot be sustained in view of the material on record which highlight the Appellant's consistent compliance with the high standards of environmental safety and management.
- DD. That pertinently, the Hon'ble NGT erred in directing the constitution of a Joint Committee in as much as the Hon'ble NGT delegated the power of adjudication to the State authority. That core adjudicatory functions cannot be delegated in this fashion, and that the Joint Committee's scope went beyond mere fact-finding.
- EE. That the Hon'ble NGT erred in as much as the aforementioned delegation was beyond the mere administrative roles and power vested in the Joint Committee to assist the Tribunal.
- FF. The Hon'ble Tribunal has failed to consider that the units of the Applicant employ 800 employees and provide livelihood to approximately 3000 families and directing and is effectively contributing to the economy of the country and thus ought not be directed to close down despite all the compliance of the Applicant placed on record.



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GG. That the Hon'ble NGT failed to take into consideration that the Original Applicants have not held other factories liable nor taken any action against other factories which are adjacent to the lands of the Applicants. To the contrary, the Original Applicants, have maliciously only specifically targeted the Appellant.

HH. The Hon'ble Tribunal has failed to consider the formula determined by the formula set out in the Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund for determining the compensation in the impugned Order.

II. That the second impugned order is bad in law in as much as it was passed without affording the Appellant an opportunity to present its case. Thus, the same is violative of principles of natural justice.

JJ. That it is established facet of law that a party is entitled to an oral hearing if its substantial rights are at stake. Thus, the Appellant was entitled to an oral hearing in view of the significant penalty imposed upon it by the first impugned order.



KK. That the second impugned order incorrectly holds that the Appellant's Review Application was merely reagitating issues of fact previously adjudicated upon. However, the second impugned order fails to take into consideration the



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discrepancies and errors patent on the face of the record pointed out by the Appellant in its Review Application.

LL. That the said discrepancies, as have also been elaborated upon in the present Appeal, clearly demonstrate that the first impugned order suffers from errors patent on the face of the record. For this reason, the prayers sought in the Appellant's Review Application should have been granted. The second impugned order is erroneous in as much as it failed to do so.

37. That the Appellant states that no other Appeal has been filed against the impugned final order dated 29.08.2022 passed by the Hon'ble National Green Tribunal, Special Bench, New Delhi in Original Application No. 124 of 2017 (WZ) and impugned final order dated 22.11.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Review Application No. 7 of 2022 (WZ) in Original Application No. 124 of 2017 (WZ); and

PRAYER

Wherefore in view of the aforementioned facts and circumstances, it is most humbly prayed that this Hon'ble Court be pleased to,

A. Admit and allow the present appeal and set aside the impugned final order dated 29.08.2022 passed by the Hon'ble National Green Tribunal, Special Bench, New Delhi in Original Application No. 124 of 2017 (WZ) and impugned final order dated 22.11.2022 passed by the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Review



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Application No. 7 of 2022 (WZ) in Original Application No. 124 of 2017 (WZ); and

B. Pass any further and other such order as this Hon'ble Court may deem fit and proper in the circumstances of the present case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE APPELLANT AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN AND FILED BY:

(VIVEK JAIN)
ADVOCATE FOR THE APPELLANT

DRAWN ON: 01.12.2022
FILED ON: 02.12.2022
PLACE: NEW DELHI



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IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. _____ OF 2022

IN THE MATTER OF:

Benzo Chem Industries Pvt. Ltd.

... Appellant

VERSUS

Arvind Manohar Mahajan & Ors.

... Respondents

CERTIFICATE

Certified that the Civil Appeal is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Civil Appeal. It is further certified that the copies of the documents/annexures attached to the Civil Appeal are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Civil Appeal for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Appellant/person authorized by the Appellant whose Affidavit is filed in support of the Civil Appeal.

FILED BY



VIVEK JAIN
ADVOCATE FOR THE APPELLANT

FILED ON: 02.12.2022
NEW DELHI



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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2022

IN THE MATTER OF:

BENZO CHEM INDUSTRIES PRIVATE LIMITED

...PETITIONER

VERSUS

ARVIND MANOHAR MAHAJAN & ORS.

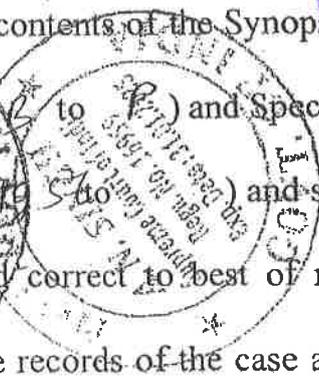
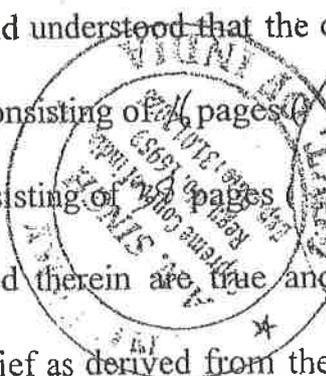
...RESPONDENTS

AFFIDAVIT

I, Pravin Nathaji Patil, S/o Shri Nathaji Patil, aged about 39 years, R/o Flat No. 003, B-Wing, Panvelkar Rellonia CHS, Shirgaon, Badlapur (E), Maharashtra - 421503 do solemnly affirm and state as under:

1. That I am the authorized representative of the Petitioner in the present matter and am as such authorized and competent to affirm the present affidavit. I have been duly authorized by the Petitioner in this regard.

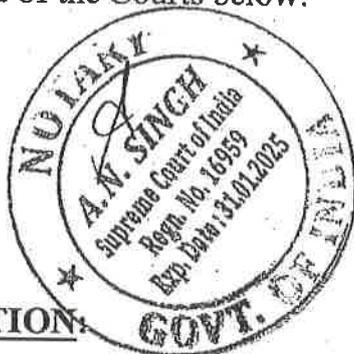
That I have read and understood that the contents of the Synopsis and List of Dates consisting of 4 pages () to () and Special Leave Petition consisting of 7 pages () to () and say that the facts stated therein are true and correct to best of my knowledge and belief as derived from the records of the case and last paragraph is prayer before this Hon'ble Court. I also state that



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the contents of the accompanying applications are true and correct to the best of my knowledge and belief.

3. I state that the copies of the documents annexed to the Special Leave Petition are true copies of their respective originals and form part of the record of the Courts below.

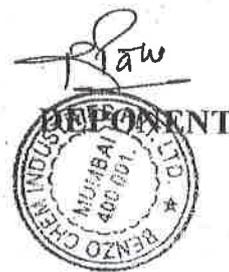
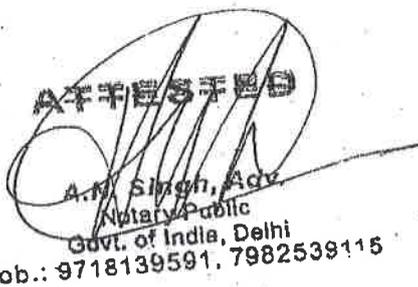


VERIFICATION:

I, the abovenamed deponent, do hereby solemnly verify that the contents of the aforesaid affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Verified at _____ on this 01 DEC 2022 day of _____, 2022.

I Identify the deponent who has Signed/Put T.I. in my presence



01 DEC 2022



Item No.03

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

MISCELLANEOUS APPLICATION No. 27/2022(WZ)

Mr. Arvind Manohar Mahajan

.....Appellant

Versus

M/s Benzo Chemical Industries Pvt Ltd. & Ors.

....Respondent(s)

Date of hearing: 05.12.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant : Mr. Omkar A. Chavan, Advocate

Respondent : Mr. Saurabh Kulkarni, Advocate for R-1

ORDER

1. This Miscellaneous Application has been filed by the applicant with the following prayers.

"a. Review the judgment and order dated 29.08.2022 and further be pleased to modify it to the extent of grant compensation to petitioners and clarify the quantum of compensation for adversely affected crop quality and quantity for a period more than decade. The losses incurred here are due to degradation of soil, water and environment. The Respondent solely liable to pay compensation as crop quality and quantity has been harmed due to the effluents discharged from the Respondent-factory into agricultural land in the factory vicinity area.

b. Grant such other and further relief as this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case be granted."

2. From the side of Respondent No.1/ Shri. Govindrao Vamanrao Dose, learned counsel Mr. Saurabh Kulkarni has appeared.



3. The learned counsel for Applicant Mr. Omkar A. Chavan has appeared and says that he wants to withdraw this application, therefore, we dismiss it as withdrawn.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

December 5, 2022.
Miscellaneous Application No. 27/2022(WZ)
S. J.



ITEM NO.65

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 39320/2022

(Arising out of impugned final judgment and order dated 29-08-2022 in OA No. 124/2017 22-11-2022 in RA No. 07/2022 passed by the National Green Tribunal, western Zone, Pune)

BENZO CHEM INDUSTRIAL PRIVATE LIMITED

Petitioner(s)

VERSUS

ARVIND MANOHAR MAHAJAN & ORS.

Respondent(s)

(IA No.192800/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.192798/2022-STAY APPLICATION and IA No.192797/2022-CONDONATION OF DELAY IN FILING APPEAL)

Date : 09-12-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH

For Petitioner(s)

Mr. Atmaram Nadkarni, Sr. Adv.
Mr. Zulfiquar Menon, Adv.
Mr. Vivek Jain, AOR
Mr. Waseem Pangarkar, Adv.
Ms. Nadiya Sarguroh, Adv.
Mr. Swapnil Srivastava, Adv.
Mr. S.S. Rebello, Adv.
Ms. Deepti Arya, Adv.
Ms. Arzu Paul, Adv.
Ms. Manisha Gupta, Adv.
Mr. Rajat Jain, Adv.



For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Validity unknown
Digitally signed by
Narinder Jasjit
Date: 2022.12.21
13:07:54
Reason:

Delay condoned.

Issue notice to show cause as to why the appeal should not be admitted.



In the meantime, the operation of the impugned judgment and order passed by the Tribunal shall remain stayed.

(DEEPAK SINGH)
COURT MASTER (SH)

(ANJU KAPOOR)
COURT MASTER (NSH)



Re: Urgent: Listing of Civil Appeal before the Supreme Court of India bearing Diary Number 39320 of 2022 In the Matter of Original Application 124 of 2017.

Nadiya Sarguroh <nadiya.sarguroh@mzmlegal.com>

Mon 12-Dec-22 1:58 PM

To: roamravati@mpcb.gov.in <roamravati@mpcb.gov.in>; ms@mpcb.gov.in <ms@mpcb.gov.in>; pso@mpcb.gov.in <pso@mpcb.gov.in>; lo@mpcb.gov.in <lo@mpcb.gov.in>; sroakola@mpcb.gov.in <sroakola@mpcb.gov.in>

Cc: Waseem Pangarkar <waseemp@mzmlegal.com>; Allan David <allan.david@mzmlegal.com>; Swapnil Srivastava <swapnil.srivastava@mzmlegal.com>

📎 1 attachments (770 KB)

Letter to MPCB regarding Stay of NGT Order (12.12.2022).pdf

Respected Sir and Ma'am

We are concerned for our client, Benzochem Industries Private Limited.

On behalf of and upon the instructions of our client please find enclosed the letter along with the order of the Hon'ble Supreme Court of India dated 9.12.2022 wherein the Hon'ble Court was pleased to stay the operation of the order of the Hon'ble National Green Tribunal in the matter of O.A No 124 of 2017 (WZ), M.A. No. 299/2017 (WZ) Shri Arvind Mahajan & Ors. vs. M/s. Benzochem Industries Pvt. Ltd. & Ors dated 29.08.2022

In light of which you are requested not to undertake any adverse actions against our client. and comply with the order of the Hon'ble Supreme Court of India

The contents of the letter are self explanatory.

Warm Regards,

Nadiya Sarguroh

Principal Associate

Mobile: +919930914512

Landline: +91-22-22643333/6666

Email: nadiya.sarguroh@mzmlegal.com

Website: www.mzmlegal.com

Address: 1D, One Forbes, Kalaghoda, Mumbai - 400 001, India



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From: Nadiya Sarguroh

Sent: Tuesday, December 6, 2022 8:12 PM

To: roamravati@mpcb.gov.in <roamravati@mpcb.gov.in>; ms@mpcb.gov.in <ms@mpcb.gov.in>;



pso@mpcb.gov.in <pso@mpcb.gov.in>; lo@mpcb.gov.in <lo@mpcb.gov.in>; sroakola@mpcb.gov.in <sroakola@mpcb.gov.in>

Cc: Waseem Pangarkar <waseemp@mzmlegal.com>; Allan David <allan.david@mzmlegal.com>; Swapnil Srivastava <swapnil.srivastava@mzmlegal.com>

Subject: Urgent: Listing of Civil Appeal before the Supreme Court of India bearing Diary Number 39320 of 2022 In the Matter of Original Application 124 of 2017.

Dear Sirs/Madam,

We are concerned for our client, Benzochem Industries Private Limited.

On behalf of and upon the instructions of our client please find enclosed the letter stating the actions undertaken by the client and the listing of the captioned Civil Appeal before the Supreme Court of India on 9.12.2022.

In light of which you are requested not to undertake any adverse actions against our Client.

The contents of the letter are self explanatory.

Warm Regards

Nadiya Sarguroh

Principal Associate

Mobile: +919930914512

Landline: +91-22-22643333/6666

Email: nadiya.sarguroh@mzmlegal.com

Website: www.mzmlegal.com

Address: 1D, One Forbes, Kalaghoda, Mumbai - 400 001, India

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M Z M L E G A L L P P

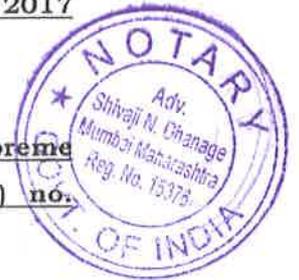
(EMAIL/SPEED-POST)

MZM/WP/0845/2022

12 December 2022

To,
Maharashtra Pollution Control Board
Regional Office Amravati
 Sahkar Surbhi Bapat Wadi,
 Near Vivekanand, Amravati,
 Pin-444601.
Email: roamravati@mpcb.gov.in
Kind Attention: Mr. Rajendra A Rajput
(Regional Officer, Amravati)

- Re : 1. Letter dated 06.12.2022 sent by us to you regarding the filing of Appeal against the Order dated 29.08.2022 passed by Hon'ble NGT in O.A No 124 of 2017 (WZ).
2. Letter dated 29.11.2022 sent by us to you regarding the extension of time for complying with the Order dated 29.08.2022 passed by Hon'ble NGT in O.A No 124 of 2017 (WZ).
3. Order dated 28.11.2022 passed by the Hon'ble Supreme Court of India in Special Leave Petition (Civil) no. 21613/2022.
4. Regarding your notice for compliance of the order passed by Hon'ble NGT in the matter O.A No 124 of 2017 (WZ), M.A. No. 299/2017 (WZ) Shri Arvind Mahajan & Ors. v/s. M/s. Benzochem Industries Pvt. Ltd. & Ors ("said Notice").
5. Order passed by Hon'ble NGT in the matter O.A No 124 of 2017 (WZ), M.A. No. 299/2017 (WZ) Shri Arvind Mahajan



Page 1 of 3





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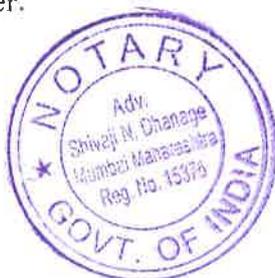
& Ors. v/s. M/s. Benzochem Industries Pvt. Ltd. & Ors
dated 29.08.2022 ("said Order").

Sub : Letter intimating stay of the order dated 29.08.2022 passed by Hon'ble NGT in O.A No 124 of 2017 (WZ), M.A. No. 299/2017 (WZ) Shri Arvind Mahajan & Ors. v/s. M/s. Benzochem Industries Pvt. Ltd. & Ors.

Respected Sir,

We are concerned for Benzochem Industries Private Limited (hereinafter referred to as "**Benzochem**" / "**our Client**" / "**the Company**") having its registered office at 26/28-A, Cawasji Patel Street, Fort, Mumbai Maharashtra 400001. On behalf of and under our Client's instructions we state to you as follows:

1. We refer to our Letter dated 06.12.2022. As intimated by us in the letter, our Client had exercised its legal rights as per the National Green Tribunal Act 2010 ("**the Act**") and the rules framed thereunder and has filed a civil appeal bearing diary number 39320 of 2022 against the said Order before the Hon'ble Supreme Court of India ("**Appeal**"). The Appeal was mentioned on 02.12.2022 and the Hon'ble Supreme Court of India was pleased to pass an order listing the Appeal for hearing on 09.12.2022.
2. On 09.12.2022, the Hon'ble Supreme Court of India, upon hearing our Counsel, was pleased to grant a stay on the execution of the said Order ("**Stay Order**"). A copy of the Stay Order is attached hereto as **Annexure A** for your reference.
3. In pursuance of the Stay Order of the Hon'ble Supreme Court, we request you to hold any acts with respect to the execution of the said Order of the Hon'ble National Green Tribunal in O.A. 124 of 2017 and not proceed to take any adverse actions against our Client in pursuance thereof. It is humbly requested that you comply with the directions of the Supreme Court passed in the Stay Order.



Page 2 of 3





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4. This letter is being issued without prejudice to contentions and submissions of the Company taken under the Appeal, Special Leave Petition, Review Application and the Interim Applications before the Hon'ble National Green Tribunal and further the same are without prejudice to any other right or remedy available to the Company under applicable law and should not be considered as a waiver of the same.

Regards,

A handwritten signature in black ink, appearing to read 'Waseem Pangarkar', written over a horizontal line.

For MZM Legal

Waseem Pangarkar, *Senior Partner*

Copy to:

1. The Hon'ble Member Secretary, MPCB Mumbai.
2. The Principal Scientific Officer (PSO), MPCB, Mumbai.
3. The Law Officer (HQ), MPCB Mumbai.
4. Sub Regional Officer MPCB, Akola.



Page 3 of 3



ITEM NO.65

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 39320/2022

(Arising out of impugned final judgment and order dated 29-08-2022 in OA No. 124/2017 22-11-2022 in RA No. 07/2022 passed by the National Green Tribunal, western Zone, Pune)

BENZO CHEM INDUSTRIAL PRIVATE LIMITED

Petitioner(s)

VERSUS

ARVIND MANOHAR MAHAJAN & ORS.

Respondent(s)

(IA No.192800/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.192798/2022-STAY APPLICATION and IA No.192797/2022-CONDONATION OF DELAY IN FILING APPEAL)

Date : 09-12-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH

For Petitioner(s)

Mr. Atmaram Nadkarni, Sr. Adv.
Mr. Zulfiquar Menon, Adv.
Mr. Vivek Jain, AOR
Mr. Waseem Pangarkar, Adv.
Ms. Nadiya Sarguroh, Adv.
Mr. Swapnil Srivastava, Adv.
Mr. S.S. Rebello, Adv.
Ms. Deepti Arya, Adv.
Ms. Arzu Paul, Adv.
Ms. Manisha Gupta, Adv.
Mr. Rajat Jain, Adv.



For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Issue notice to show cause as to why the appeal should not be admitted.



In the meantime, the operation of the impugned judgment and order passed by the Tribunal shall remain stayed.

(DEEPAK SINGH)
COURT MASTER (SH)

(ANJU KAPOOR)
COURT MASTER (NSH)



SECTION XVII

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9202 OF 2022

with

INTERLOCUTORY APPLICATION Nos. 192798 & 192800 OF 2022

(Application for Stay & Exemption from filing C/c of impugned judgement)

BENZO CHEM INDUSTRIAL PRIVATE LIMITED

...Appellant

VERSUS

ARVIND MANOHAR MAHAJAN AND ORS.

... Respondents

OFFICE REPORT

The matter above mentioned was listed before the Hon'ble Court on 09.12.2022, when the Court was pleased to pass the following order:

**“Delay condoned.
Issue notice to show cause as to why the appeal
should not be admitted.
In the meantime, the operation of the impugned
judgment and order passed by the Tribunal shall
remain stayed.”**

It is submitted that there are sixteen respondents in the matter. In view of above said order counsel for the appellant has not filed the spare copies, so far. Hence, notice could be issued to the respondents.

Service is not complete in the matter.

The matter along with applications above mentioned is listed before the Hon'ble Court with this office report.

DATED THIS The 21st Day of April, 2023

ASSISTANT REGISTRAR

Mr. Vivek Jain, Advocate

ASSISTANT REGISTRAR



Case Details

Indexing

Earlier Court Details

Tagged Matters

Listing Dates

Interlocutory Application / Documents

Court Fees

Notices

S.No	Process Id	Notice Type	Name	State / District	Station	Issue Date	Returnable Date
1	183389/2022-12-16	letter for certified copy	the registrar	DELHI / NEW DELHI	NEW DELHI	16-12-2022	23-01-2023
2	83386/2023-04-26	due course notice	JUNION INSPECTOR OF FACTORIES	MAHARASHTRA /		26-04-2023	30-11-0001
3	83385/2023-04-26	due course notice	MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION,	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
4	83384/2023-04-26	due course notice	DEPUTY REGIONAL OFFICER, MAHARASHTRA STATE POLLUTION CONTROL BOARD	MAHARASHTRA / AKOLA	AKOLA	26-04-2023	30-11-0001
5	83383/2023-04-26	due course notice	JANKABAI RAMESH EKADE	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
6	83382/2023-04-26	due course notice	KADU BAJIRAO THARKAR	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001



7	83381/2023-04-26	due course notice	NINA BAJIRAO THARKAR	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
8	83380/2023-04-26	due course notice	RAMESH LAXMAN CHOUDHARY	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
9	83379/2023-04-26	due course notice	SHOBHA SHANKAR MAHAJAN	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
10	83378/2023-04-26	due course notice	NILESH SHANKAR MAHAJAN	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
11	83377/2023-04-26	due course notice	UMESH PURUSHOTAM NARKHADE	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
12	83376/2023-04-26	due course notice	RAVINDRA MANOHAR MAHAJAN	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
13	83375/2023-04-26	due course notice	MANGALA RAVINDRA MAHAJAN	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
14	83374/2023-04-26	due course notice	SAGUNA SOPAN EKDE	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
15	83373/2023-04-26	due course notice	SOPAN LAXMAN EKDE	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
16	83372/2023-04-26	due course notice	GITA ARVIND MAHAJAN	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001
17	83371/2023-04-26	due course notice	ARVIND MANOHAR MAHAJAN	MAHARASHTRA / BULDANA	BULDANA	26-04-2023	30-11-0001

Defects

Judgement/Orders

Mention Memo

Restoration Details

DropNote

Appearance

Office Report

Similarities



**BEFORE THE NATIONAL GREEN
TRIBUNAL
WESTERN ZONE BENCH AT PUNE
Execution Application No. 9 of 2023
(previously numbered O.A. 71/2023)
IN THE MATTER BETWEEN:**

Arvind Manohar Mahajan & Ors

...Applicants

Versus

M/s Benzo Chem Industries Private
Limited & Ors.

...Respondents

REPLY OF RESPONDENT NO. 1



Dated this 03rd day of August 2023

MZM Legal LLP

Advocate for Respondent No.1

**Office: Level Six, 6th Floor, One Forbes
V. B. Gandhi Marg, Kalaghoda,
Mumbai 400 001**

Email: lawyers@mzmlegal.com